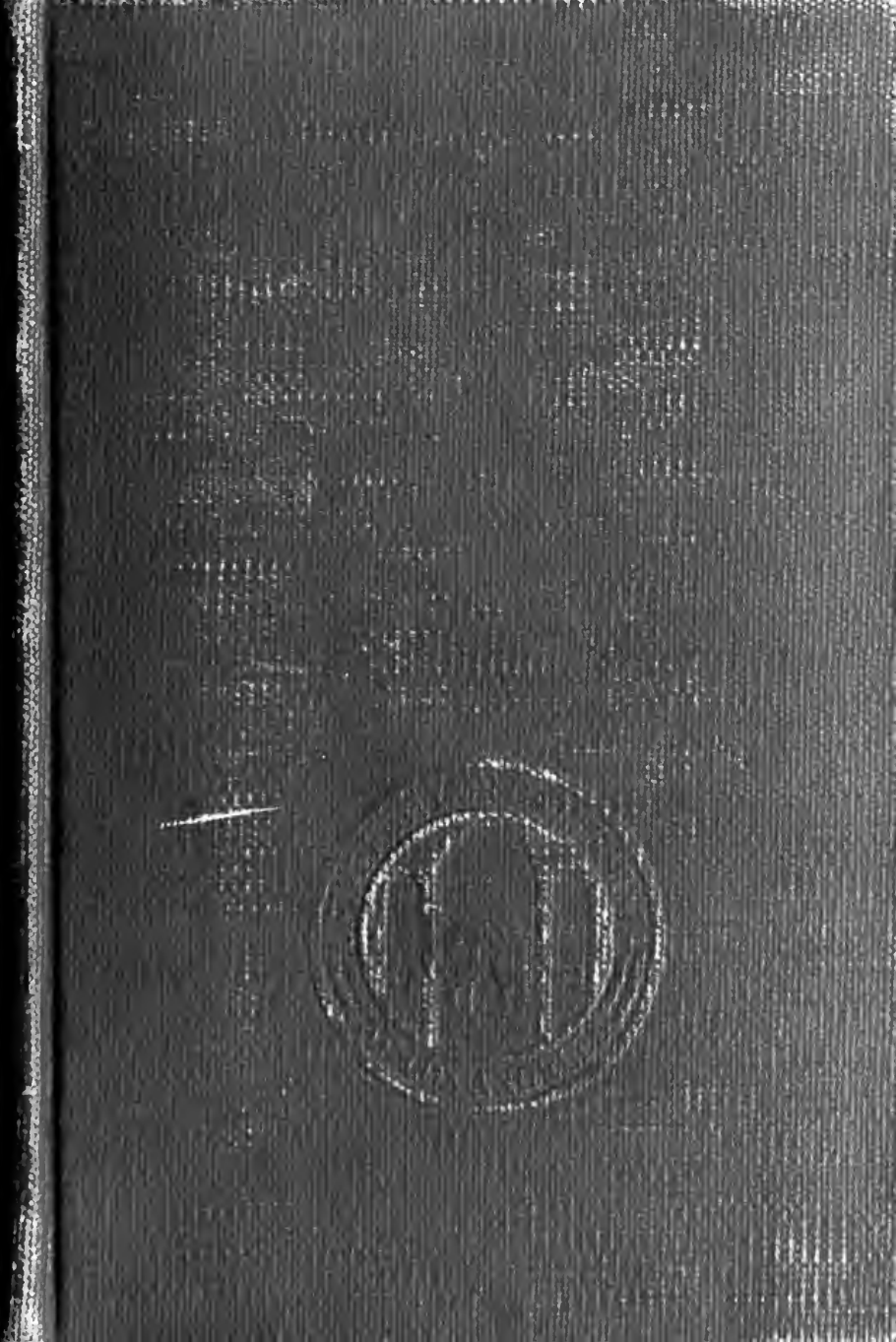

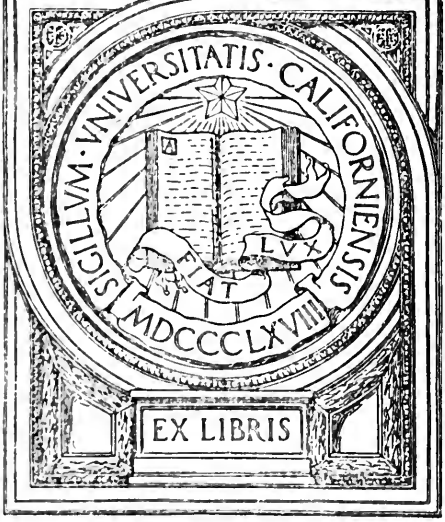

1909

The Reform of the House of Lords

With a Criticism of the Report of the Select Committee of 2nd December, 1908

By

William Sharp McKechnie

M.A., LL.B., D.Phil.

Lecturer on Constitutional Law and History in Glasgow University
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MCMIX.

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PREFACE.

THE Reform of the Upper Chamber is the question of the hour. The Government and the Select Committee of the House of Lords have placed before the country rival schemes upon which the electors of the House of Commons may soon be called to express a deliberate opinion. No judgment on a theme of such importance can profitably be formed without some knowledge of historical antecedents; for this problem, like all other problems of the present, is deeply rooted in the past. To supply, in the smallest possible space, the indispensable minimum of information is the object of the following articles, which appeared originally in the columns of the *Glasgow Herald*, and are here reprinted by kind permission of the proprietors, in response to the suggestion that, in a more permanent form, they might prove useful. They have accordingly been revised and some new matter added; but brevity and lucidity have been aimed at, rather than

exhaustive treatment, which, indeed, could only have been attempted in a bulky volume. It may perhaps be claimed for this little book, however, that it contains more of the essential facts relevant to the enquiry than can be found elsewhere within equally narrow compass. It would hardly have been practicable, even if it had been desirable, to give detailed references to the original or derivative authorities for facts which are the common property of historians; or to distinguish, in every case, between those conclusions that seemed original to the author and those that may have been suggested by the writings of others. Reference should here be made, however, to Mr. Luke Owen Pike's masterly treatise on the *Constitutional History of the House of Lords*, which ought to be in the hands of all who desire a thorough knowledge of the subject on its historical side. Information on the political and international aspects of a complex theme has been collected from scattered sources. Some original contributions have been added; particularly in the section which illustrates the difficulties surrounding the adoption of the Referendum as a mediator between the two Chambers of the Legislature; in the criticisms hazarded upon the scheme of reconstruction proposed by Lord Rosebery's Committee; and in

the outline suggested, in the final section, as an alternative framework for a reformed House of Lords. The main purpose of these articles, however, is to supply information likely to prove useful in the formation or modification of opinions that are still in process of development, or in verifying and supporting conclusions that have already been accepted as final.

GLASGOW UNIVERSITY,
1st January, 1909.

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THE PROBLEM OF A SECOND CHAMBER.

THE adage that "threatened men live long" applies with peculiar force to the House of Lords. There are other adages, however, to remind us that history, though it repeats itself, does not repeat itself for ever. Indications are not wanting that the time is ripe for the reconstruction of the Upper Chamber.

Two independent movements, indeed, in favour of far-reaching reforms have been recently inaugurated—one coming from without and the other from within; one hostile and the other friendly; one seeking to diminish the power of the House, the other to alter its composition.

The question of the continuance, abolition, or reform of the Second Chamber is thus the problem of the day. Two rival schemes are before the nation, and the electorate may soon be called to judge between them. The solution of the Govern-

ment, as embodied in the late Sir Henry Campbell-Bannerman's Resolution of June 26, 1907, would leave the House of Lords unreformed and in the enjoyment of its purely ornamental ancient privileges, but deprived of all real legislative power. The Commons after tolerating for a few months the futile criticisms of the Lords would be empowered by mere lapse of a brief fraction of a year to ignore the very existence of a Second Chamber, and to proceed to pass their statutes on their own authority, like the ordinances of the Long Parliament during the Civil War.

An alternative scheme proceeds from the House of Lords itself, and consists in the recommendations of the Select Committee, which, appointed on June 12, 1907, and re-appointed January 30, 1908, has now, after the labours of some eighteen months, under the experienced Chairmanship of Lord Rosebery, placed its Report upon the table of the House. Before proceeding to discuss the merits of these rival schemes, some preliminary consideration of facts and principles will be required.

An initial difficulty arises from the antagonistic points of view, whence opposed schools of politicians survey the proposed field of enquiry. Any scheme that honestly endeavours to be reasonably impartial is sure to be condemned and scouted by

extreme men of both parties—by those, on the one hand, who still regard the existing Upper Chamber, exactly as it stands, as the perfection of human wisdom ; and by those, on the other, who reject as inadequate all reforms short of total abolition, root and branch. Leaving aside these irreconcilables, it may yet be worth while to attempt to narrow the main issues to within reasonable limits, by searching for common ground on which moderate men of both parties may stand together.

Four principles may be provisionally suggested as almost possessing the force of axioms—namely, that, alike in theory and in practice, the two-chambered form of Legislature has been everywhere accepted as the normal type of Parliament ; that where, as under the British Constitution, Parliament is legally omnipotent, a Second Chamber of some sort is a practical necessity ; that, notwithstanding this, the existing House of Lords, at the present stage of its development, must not be assumed, without proof, to fulfil the requirements of a perfect Upper Chamber, equally suited to all times and circumstances ; and that the remodelling of the Lords, if inevitable, had better come with moderation from within than violently from without. A few words may be profitably added to enforce each of these propositions.

1. *The Preference for a Two-chambered Legislature.*

The countries of modern Europe have with remarkable unanimity — the small nations of Servia, Greece, and Norway form unimportant exceptions—given practical effect to their preference for the two-chambered form of Legislature ; while the great Anglo-Saxon races of three continents—the United States of America, the Commonwealth of Australia, the Dominion of Canada, and the various divisions of South Africa —have all taken the most effective method of endorsing their belief in what may safely be regarded as the normal type of Parliament.

Experiments, it is true, have sometimes been attempted towards governing by means of a single legislative Chamber in more than one of the great nations of the modern world ; but these experiments have proved, without exception, shortlived ; and yet have in most cases lasted long enough to teach important object-lessons by bitter experience. The Long Parliament in 1649 abolished the Upper House and established the rule of an intolerant one-chambered Legislature, claiming to be supreme in Church and State. England escaped from this galling bondage, only to fall under the military domination of Cromwell and his Ironsides ; and

equilibrium was not permanently re-established until the Restoration brought back the ancient House of Lords along with the ancient Monarchy.

Under the influence of Franklin, again, the American Confederation of the thirteen original States adopted in 1781 the principle of a Single Chamber; but the experience of a few years persuaded the framers of the American Constitution in 1787 that their Congress must include a powerful Senate as well as a House of Representatives — an arrangement that has existed unchallenged until the present day.

Finally, two experiments in the direction of a Single Chamber, made in 1791 and 1848 respectively, have twice conducted France in the same vicious circle through political anarchy to absolutism. Other instances might readily be culled from history, but sufficient has perhaps been said to support the contention of the late Professor Lecky that "the necessity of a Second Chamber, to exercise a controlling, modifying, retarding, and steadying influence, has acquired almost the position of an axiom."

2. *Special Urgency under the British Constitution.*

The principle thus accepted in practice by all modern nations of importance — whether on

grounds of abstract theory or as the result of their own experience—is in a special sense a necessity for the British Empire. Alone among first-class Powers, Great Britain submits to the absolutely unfettered authority of a supreme Legislature. The most cherished among the rights of individual citizens, as of societies and corporations, are held on sufferance—held merely at the goodwill of a Parliament which is entirely devoid of all those checks and balances that have been carefully devised to restrict the power of other law-making bodies.

The British Parliament has more power than any other Legislative Assembly in the world. Unlike the Congress of the United States, which is limited strictly to eighteen topics specified in the written Constitution ; unlike the Legislatures of countries such as Belgium, against whose interference certain individual rights are guaranteed as "fundamental" and unalterable ; unlike the Assemblies of Canada and Australia, restrained both by the veto vested in the Executive and by the overshadowing supremacy of the Mother Parliament, that Mother Parliament itself is an absolutely Sovereign Legislature. It can do anything that is not logically or physically impossible, and it is therefore legally omnipotent.

This is the reason, sufficient and conclusive in itself, why it is necessary to divide the power of

Parliament between two Chambers, neither of which is completely under the domination of the other. Powers so tremendous and unexampled cannot safely be entrusted to the arbitrary decision of the fluctuating majorities of any Single Chamber, no matter what may be the franchise on which it has been elected, or the principles on which it conducts its business.

Supplementary arguments, if such were necessary, for the continuance of an efficient Second Chamber in Great Britain could readily be found. The Lower House, for example, even in non-contentious legislation, may sometimes make mistakes ; and therefore a good Revising Chamber is required to remedy defects in the workmanship of bills as originally drawn. The House of Commons is too large a body for the making of ideal laws. Individual responsibility is lowered by the sense of numbers. The attendance, further, varies from night to night, and thus the continuity of amendments is not preserved ; while want of leisure necessitates, too frequently, the hustling through of important bills without full consideration, resulting in motley patchwork, where foreign Legislatures, less "free and representative" perhaps, but guided by professional experts, would have achieved a higher level of scientific excellence.

For all these reasons a Revising Chamber is desirable and necessary. Further, second thoughts are sometimes best, and mere delay in carrying through legislative changes may prove to be a gain, in protecting the democracy against the impetuosity of its own decisions. The House of Lords in this respect stands for a principle of appeal "from Philip drunk to Philip sober."

Changes noted by recent writers in the poise and balance of our modern Constitution, within the last quarter of a century, augment rather than diminish the cogency of these arguments in favour of a Second Chamber. The increasing dependence of the Lower House upon the Ministry of the day, and the curtailment of debate (regrettable even if necessary) by means of the constant application of the "closure" and its more drastic supplement known to politicians as the "guillotine," have been pointed out with some apprehension as tending towards the iron despotism of mechanical majorities. The House of Commons, for all its nominal ascendancy, has become the tied bondman of the Government of the day. Party discipline is enforced with iron rigour; both sides vote to order; the rights of private members are reduced to zero; all initiative among the rank and file has been crushed out.

An Upper House is thus required for many

purposes — to revise and check the legislative measures of the Lower House, to guarantee continuity of policy, to safeguard individual rights against the hasty decisions of the Lower House, and to give stability and endurance to the constitutional framework on which the whole body politic depends. A strong Second Chamber (accepted as a necessity by all) is particularly desired by at least three classes—by those who regard the tyranny of a mechanical majority as the worst of all possible despotisms ; by those who dread that a Single Chamber might, in a period of crisis, be captured by the friends of reaction, thus undoing in a brief space the work of many centuries in building up the liberties of the nation ; and by those who, like the late Herbert Spencer, seek to combat the increasing tendency of an inquisitorial paternal government to multiply legislative activities, and so to reduce private initiative to vanishing point, through regulating all spheres of human activity by Act of Parliament.

These are subsidiary points. The main reason for the continued existence of the House of Lords, as already stated, lies in the impossibility of vesting the supreme power of the Sovereign Imperial Parliament in any Single Chamber, however perfect.

3. *The Question of Reform.*

It is doubtful whether the warmest of the admirers of the existing House of Lords is entirely satisfied with its present position in the Constitution of the British Empire. Some of its Tory well-wishers regret that it has fallen from its high estate, and would raise it once again to its old legislative equality with the Lower House, or restore its ancient right to amend and initiate money bills. If politicians of a certain type freely spoke their minds, they would endow the Upper Chamber with the right to reject, not temporarily, but permanently and finally, the successive bills sent up from the Commons, even though a General Election on a definite issue had supervened since the previous rejection.

A different type of politician, more outspoken, clamours for a reduction of existing powers ; and a third would leave the authority of the Upper House intact, while altering its composition. In any view, it can hardly be expected that the *status quo* should give satisfaction to keen supporters of Liberal Governments, who find their favourite legislative measures thrown out by the Upper Chamber or essentially altered there, while, as they allege, the bills promoted under the auspices of Conservative Cabinets pass the Lords with mono-

tonous regularity, practically without criticism or amendment.

The Upper House, in their opinion, fails at all times to perform its pretended functions of a checking and revising Legislative Chamber, for it either rejects wholesale or accepts wholesale, according as one party or the other is in power. Any satisfactory scheme of reform would require to keep in view this serious defect, and endeavour to devise some system which would tend to effect a greater approximation to equilibrium in the relations between the House of Lords and the Government of the day.

The question of reform, however, is not one to be approached on a purely party basis. There have been occasions in the past—as at the passing of the Treaty of Utrecht, and again throughout the reigns of the first two Georges—when the House of Lords stood as a great Whig bulwark against the encroachments of Tories and the intrigues of Jacobites ; and it must not be assumed that in the future, as in the present, that House will necessarily show itself the constant friend of one party and the enemy of the other.

That Upper Chambers, in this twentieth century, are not necessarily viewed with distrust by the friends of popular rights and liberties is amply proved by the favour with which the people of the

separate States of the American Federal Union venerate their Senate as their protector, and uphold it in the exercise of an authority greater out of all proportion than that of the British House of Lords.

History, on the other hand, would seem equally to prove the folly of those who deny all possibility of development in the future to an Upper Chamber which has shown so great a power of adaptation to new conditions in the past. The entire history of the House of Lords has been an unbroken record of alteration and advance. Of the various titles by which its present members sit, not one, except perhaps that of the twenty-six prelates who still retain their seats, would have been recognised as valid during the early centuries of the history of the Upper Chamber.

However experts may decide the question of origins, the embryonic House of Lords (whether we begin its history with the Norman *Curia Regis* or go still farther back to assert its identity with the Witenagemot of Wessex) was certainly not in its rude beginnings an assembly of hereditary legislators; while, if we look to the other extremity of its long career, important changes may be noted that have only taken effect in recent years. For example, the four "law lords" (or Lords of Appeal in Ordinary) were only introduced in terms

of the Appellate Jurisdiction Act of 1876, to restore efficiency to the House of Lords in its capacity of a Court of final appeal; while it was so late as 1887 that another Act conferred on them the right to retain their seats and votes, after resigning their salaried judicial posts, thus creating, for the first time, a class of life peers enjoying full membership of the Upper House.

In the intervening centuries frequent and weighty changes have been made. It would be absurd, in the light of past experience, to expect the House of Lords to stop short for ever in its career of change exactly where it, for the moment, stands; and even more absurd to hail the present stage of its development as denoting the zenith of its course. To deny to the Upper Chamber all power of further advance is to be false to its past traditions—is to alter it radically from a progressive national institution to an effete, stereotyped, dead anomaly. Change is of its very essence.

4. *The Need of Moderation in Reform.*

The "mending or ending" of the House of Lords has long been a favourite phrase among irresponsible politicians. Whatever it may mean to the ordinary "man in the street"; to Lord Morley, who is credited with its invention, it was probably merely an emphatic method of emphasis-

ing the pressing need of some reform, by the use of a tag of rhyme to serve at once as a half-meant threat and as a phrase to catch the multitude. "Mending" may be urgently desired by many, but "ending" has probably not been seriously contemplated by any British statesman of front rank, in cool blood and after full deliberation, since Cromwell's conversion to the necessity of the "Other House" after a short experience of the alternative system.

"Slow but sure" has hitherto been the motto of successful reform in Great Britain—the action of the House of Lords, indeed, has materially contributed at once to the slowness and the sureness—and there seems no reason why the remodelling of the Upper Chamber should be made the occasion of a change of policy. Violent reforms, like "violent delights, have violent ends, and in their triumph die." Those who would lay rough hands on the House of Lords should remember that extreme measures, by a natural principle of reaction, tend to defeat themselves. Those, on the contrary, who summarily reject all suggestions for improvement should, for their part, remember that to save the Upper Chamber from its friends may be to hand it over to its enemies.

Reform of the House of Lords, if come it must, is likely to be more easily achieved, more popular,

enduring, and beneficent if undertaken by that House itself, acting on its own initiative in a spirit of calm and moderation, than if effected violently from without, under pressure of the angry passions generated by the heat of party strife.

II.

THE CHIEF FUNCTION OF THE HOUSE OF LORDS.

Any effective criticism of the Upper House of Parliament must start from a correct appreciation of its present place in the British Constitution. It is essential, above all, in approaching the question of reform, to bear in mind both what the Upper Chamber does, and what it does not do. On the one hand, it has been called "a suspending and revising Chamber"; and the phrase neatly summarises the two main functions now performed by the House of Lords in its legislative capacity. On the other hand, that House neither exercises nor claims to exercise at the present day, any right to oppose the deliberate and maturely-formed will of "the people"—that is, of those individuals who enjoy the franchise, taking them in the mass.

The strict letter of the Constitution, indeed, as defined by law, still allows to the House of Lords an authority exactly equal to that enjoyed by the

Commons in rejecting bills of every kind, and also in amending or initiating such measures as involve no questions of expenditure or finance ; but constitutional theory has laid down binding rules of practice which supplement and supersede the strict rules of law.

The Upper Chamber, completely acquiescing in those conventional restraints, now consistently refrains from permanently and finally wrecking measures which the Lower House has accepted after full discussion, provided always that that Lower House is unambiguously supported by the nation.

The Lords, it is true, claim the right of judging whether these conditions have been duly fulfilled ; and this contention has some show of reason, since the Commons cannot be left sole judges in their own behalf between themselves and their master, the Sovereign People, as to the terms of their own appointment.

The chief function of the Lords, then, is to interpret the will of the people, not to oppose it. They claim the right to stand at times between electors and elected—to protect the voters from the actions of the servants they have appointed when these servants seem to them inclined to disobey instructions or to go beyond the terms of their commission.

The Lords claim the further right, in certain circumstances, not only to protect the people from their servants, but to protect them from themselves. They consider it their duty to delay the passing of ill-digested measures. This is practically to exercise the function of appealing from the electors in the past to the same electors in the future, thus affording the constituencies an opportunity, under the influence of second thoughts and perhaps of fuller information, for tempering their impetuosity by discretion. The Upper House thus throws out bills not because of its own estimate of their intrinsic faults, but because of doubts as to how far the Commons have accurately interpreted the instructions received from their constituents at the last General Election, or, if so, whether these instructions will not be modified at the forthcoming one.

In rejecting, for example, the second Home Rule Bill in 1893 the Lords were of opinion that the electorate should be given an opportunity of forming and expressing its opinion on the terms of a measure of prime importance before it passed into law, with consequences which, whether for good or evil, were likely to prove irretrievable. This was not perhaps the sole issue on which the election of 1895 turned ; yet the overwhelming defeat of the Liberal party in that year is generally held to

have justified the action of the Lords, and to have proved that the Upper House at times reflects the real opinion of the country more accurately than the House of Commons does.

If the decision of the nation had been in favour of the Home Rule Bill, it would have been the recognised duty of the Lords to have given way at once. Their function is thus to suspend and delay, but not permanently to reject, any bill which public opinion is determined upon having, when that opinion has been expressed in the recognised constitutional manner at the polling booths.

For nearly a century now—at least since the passing of the Reform Act of 1832—the House of Lords has accepted this restricted view of its legislative rights. Lord Derby, for example, addressing the Upper House in the course of the debate on the Corn Importation Bill in 1846, enunciated this doctrine, amid general approval, in words still worth quoting:—"My Lords, if I know anything of the constitutional value of this House, it is to interpose salutary obstacles to rash and inconsiderate legislation; it is to protect the people from the consequences of their own imprudence. It never has been the course of this House to resist a continued and deliberately expressed public opinion. Your Lordships always have bowed, and always will bow, to the expression

of such an opinion, but it is yours to check hasty legislation leading to irreparable evils." Since that date the same sentiment has been repeated again and again, until it has become a commonplace of political literature.

That such a function is at times useful and necessary hardly admits of doubt. The exact direction of its usefulness has, however, somewhat changed in recent years, in consequence of the encroachments made by the modern Cabinet on the independence of the House of Commons. The House of Lords, which once stood guard over the actions of a too-powerful House of Commons, now stands guard over a too-powerful Cabinet. In these days of inflexible party organisation, enforced by threats of dissolution and by the habitual use of such harsh expedients as "the guillotine," it is the Ministry of the day and not the Lower Chamber of the Legislature that threatens to become omnipotent. The House of Lords is the only barrier—a frail one mayhap—that offers resistance to the supremacy of the Cabinet unrestrained and uncontrolled.

The question now before the nation is whether this suspending veto should be abolished or remain in force. That this is the real issue was made clear by the course of debates in both Houses of Parliament in the summer of 1907. It was then main-

tained, on the one hand, that the House of Lords, while never permanently obstructing the expressed will of the country, had a perfect right, by rejecting bills sent to it from the Commons, to force the Government to choose between their abandonment and an appeal to the country: Lord Ripon, as the mouthpiece of the Cabinet, on the other hand, declared emphatically that no House of Commons and no Liberal Government could allow the House of Lords to claim the right to force a dissolution; while Sir Henry Campbell-Bannerman maintained that the predominance of the Commons must prevail, without any appeal to the constituencies.

The issue is not only a clear one, but, as between the more moderate men on both sides, one which has been brought within narrow limits. The Lords' veto, it is admitted by its friends, cannot be exercised a second time upon bills that have passed the Lower House in two successive Parliaments; while the Resolution of June 26, 1907, claimed that the power of the Upper House should be so restricted that within the limits of a single Parliament the final decision of the Commons should prevail.

The issue must ultimately be determined by the public opinion of the country, and is one which demands a straightforward decision. Only two attitudes are possible. The suspending veto of

the Upper House may be abolished or it may be maintained; but it is illogical to retain it in theory, while rendering it absolutely inoperative in practice. A sham veto, indeed, would be worse than none, producing a false sense of security. It is for the public to say whether the restrictions which the Government's Resolution proposes to place on the veto of the Upper House are consistent with its effective exercise, or whether the proposed change would justify for the future the description applied by Lord Morley in 1888 to that Upper House of which he is now an honoured member—"A rickety parapet on the edge of a precipice which was more dangerous than no parapet at all."

For those who decide that the Upper House should retain its present right to force an appeal to the electorate, two subsidiary questions remain. It is rightly pointed out that the circumstances under which this power can be exercised are entirely undefined by law, either common law or statute, but depend merely on rules of constitutional usage. They are, therefore, necessarily vague and flexible, and the Upper Chamber is sole judge to decide how far such rules apply to any given case, its conduct being determined by political or moral, rather than by strictly legal, considerations.

It is sometimes argued that powers so vitally

important ought to be defined by statute. Such a change—after all a mere question of detail—would undoubtedly have much to recommend it; but, on the other hand, elasticity has proved in past centuries a useful characteristic of more than one part of the British Constitution—enabling it to meet emergencies by bending where, if hampered by fixed rules, it might more readily have broken.

A more vital question must still be faced. Does the House of Lords, on its present basis, exercise these suspending powers in a way that gives general satisfaction? Here, at least, the answer must be an emphatic negative. Conservatives and Liberals, on occasion, criticise the action of the Lords as either too timid or too bold, as humouring too much the passing prejudice of the hour, or as, on the contrary, habitually mutilating measures of reform of every sort. Mr. Birrell, for example, speaking in the Commons on February 18, 1907, characterised the House of Lords as "a Tory pocket borough" which only guarded vested interests; and complained that nothing could be done without a threat of revolution.

There are, however, politicians of another way of thinking, Liberals as well as Conservatives, whose quarrel with the Upper House is based

on different grounds; who charge it with sins of omission rather than of commission. Their complaints are not so much directed against the trenchant amendments to successive Education Bills, nor against the rejection of measures like the Small Landholders (Scotland) Bill, but rather against the timidity that induced the Lords to pass the Trades Disputes Act contrary to their own convictions, thus enabling the Labour party to dictate terms to both Houses of Parliament. A really efficient suspending Chamber, it is sometimes urged, would under these circumstances have insisted on sending a measure of such importance back to the constituencies for their reconsideration. Those who hold this view would seek to strengthen the House of Lords by altering radically its composition.

Some of those, on the other hand, who are satisfied with the existing state of things, consider that the weakness of the Upper Chamber is really a merit, and are of opinion that any device which by strengthening its authority would relatively lower that of the House of Commons, would necessarily lead to permanent deadlocks between the two, a consequence avoided under the present system, which, in spite of frequent outcries, works, in the opinion of many, fairly well upon the whole.

This suspending function, which some reformers

would strengthen, others would weaken, and others again desire altogether to abolish, is not the only duty performed by the House of Lords, although undoubtedly it is the most important. The "Revising Function," which mainly concerns bills of a non-contentious nature (or, alternatively, the comparatively non-contentious details of party bills) must be carefully distinguished.

The House of Commons has no time for scientific accuracy, as is shown by the frequency with which amending Acts are called for, even before the principal statutes have come into operation. The workmanship of Acts of Parliament would be even more imperfect than it is, if it were not for the amending powers of the Upper Chamber.

Walter Bagehot, writing in 1868, laid stress upon this function ; and Mr. Sidney Low, in his recently published *Governance of England*, has repeated familiar arguments in suggestive words that may be quoted. "Under the House of Commons' conditions bills are hustled through with half their clauses undiscussed and the other half a mass of contradictions, absurdities, and inconsistencies. These ragged, amorphous measures may be cut and trimmed into shape in the House of Lords and sent back again shorn of the excrescences fastened upon them by embarrassed ministers, overwhelmed with work, and distracted

by the necessity of conciliating one or other section of their miscellaneous following."

A bare reference is all that need here be made to important subsidiary functions performed by the Lords. Their judicial duties as the Supreme Court of Appeal for all litigations arising in England, Scotland, or Ireland are performed, it is true, by what is, in reality though not in name, a Committee of the House; but that House, as a whole, is still, in Bagehot's phrase, "a reservoir of Cabinet Ministers"; while it divides with the Commons the arduous work of sifting private bills, a duty which, if unshared, might prove completely beyond the unaided energies of the overburdened Lower House. Lastly, the Upper House is invaluable as what has been called "a ventilating and criticising chamber"—that is, as a place for airing grievances and discussing the policy of the administration, whose actions it does not claim to control.

One function with which the Upper House has sometimes been credited, it does not perform. As Bagehot emphatically declared forty years ago, "The common notion evidently fails that it acts as a bulwark against imminent revolution." It is, in truth, quite powerless to dam back the rising tide of popular demands, however unwise or unreasonable these at times may be. No Senate or

Upper Chamber that has ever been invented is strong enough by itself to hold an excited and determined nation in check.

Every one desirous of remodelling the House of Lords in its composition or of modifying its powers, must keep these fundamental facts in mind, forgetting neither the functions it performs, nor those it is incapable of performing. The question of reform may, then, be approached along any one of four main lines: the political, the historical, the international, or the abstractly experimental. The first-named may be at once discarded as full of dangers and poisoned at the source. The short-lived and changing interests of party warfare are untrustworthy guides for pointing the road to cardinal alterations upon venerable institutions.

The three other lines of inquiry are all legitimate and helpful, and, whether adopted separately or according to some principle of combination, they suggest three sources from which the public may look for information to guide them towards a just estimate of any schemes of reform that may be placed before them. To supply some elementary information along each of these three lines of inquiry will be the object of the four following sections.

III.

THE COMPOSITION OF THE HOUSE OF LORDS: A HISTORICAL OUTLINE.

No two statements are more frequently made about the Upper Chamber than that it is exclusively regulated by the hereditary principle, and that its members represent nothing beyond themselves and their own interests.

Neither of these statements can claim to be even approximately accurate. The hereditary element is tempered by the Crown's right to add to the number of existing Peers—a prerogative exercised on the advice of the Prime Minister and the Cabinet of the day. This right is used every year with a freedom that is certainly not decreasing, and the constant creation of new Peers acts in some measure as a counterpoise to the purely hereditary element. The possibility of effecting such nominations in a wholesale way acts uniformly as a check, even when it is recognised to be a dangerous power, reserved for a last resource.

On the other hand, the "representative" principle—not to be confused with the "elective" principle, with which it is often associated—finds embodiment in the prelates, who hold their seats not as individuals, but as representing the National Anglican Church, and in the Lords of Appeal in Ordinary, four life Peers, who represent in some measure the legal profession. Only once—for a short period of eighteen years—was the House of Lords a purely hereditary Assembly, when the leaders of the Parliamentary Opposition, on the brink of Civil War in 1642, excluded the Bishops, who were not reinstated until the Restoration of 1660.

The Upper House at present includes five classes: (1) The two Archbishops and the twenty-four Bishops in order of seniority (except the occupants of the great sees of London, Winchester, and Durham, who always have a right to sit); (2) the hereditary Peers of England, Great Britain, and the United Kingdom; (3) sixteen representative Peers of Scotland, elected for each separate Parliament; (4) twenty-eight representative Peers of Ireland, elected for life; and (5) four Lords of Appeal in Ordinary appointed by the Crown under the provisions of the Appellate Jurisdiction Act of 1876, who retain since 1887 their seats for life.

It is not necessary for the purposes of this

article to distinguish between those hereditary lords of Parliament who owe their seats respectively to creations prior to 1707, subsequent to 1800, or between these dates. All Peers of England and of the earlier and the later United Kingdoms have seats in Parliament, and may be conveniently arranged according to their five grades, of which two—those of Earl and Baron—were known at the Norman Conquest, while Edward the Black Prince was the first Duke summoned, and the offices of Marquess and Viscount date respectively from 1386 and 1441. At the beginning of 1908 there were 31 Dukes (including Princes of the Royal blood), 35 Marquesses, 164 Earls, 45 Viscounts, and 268 Barons.

Of these 543 hereditary Peers,[1] a small and varying number are debarred from their rights of membership by reason of non-age or other recognised disabilities at statute or common law. More than five-sixths of the Upper House, as at present constituted, is thus composed of hereditary legislators ; but the influential minority cannot be ignored.

[1] This figure includes three Princes of the Royal blood, but does not include seven Peers created during 1908, nor, of course, the 44 elected Peers of Scotland and Ireland. The figure given by the Select Committee is 592, which excludes the former, and includes the whole of the latter.

It is as erroneous to maintain that the hereditary principle alone prevails, as to argue that the composition of the House depends exclusively on prerogative. Four separate principles must be reckoned with — the hereditary principle, the principle of nomination, the official principle, and the elective principle (the last-mentioned applying to the representatives of the peerages of Scotland and Ireland).

A brief historical sketch will serve to show how these four principles have at different times been combined with one another and with other principles, now obsolete, in the composition of the House of Lords.

Such a survey may possibly afford valuable lessons for the future, for it must never be forgotten by the reformer who understands the national temperament of the British people, that changes in the form of ancient institutions are likely to be more popular, more easily effected, and more durable in proportion as they avoid a sudden break with tradition, or at least succeed in cloaking new expedients under the semblance of a return to the past. Professor Redlich, of Vienna, has recently repeated an ancient truth by emphasising the "well-known characteristic of the British Constitution: the retention of old forms with perfectly new contents." In England, if any-

where, the teachings of history have an immediately utilitarian value.

In compressing the events of many centuries into the brief space here available, it is impossible to deal adequately with the question of origins. It will be well, indeed, to avoid all reference to what has been stigmatised by the ignorant as mere "antiquarian rubbish"—a phrase that raised the ready ire of the late Professor Freeman. There is no need to dwell on the various theories of the composition of the Witenagemot, that venerable ancestor of the modern Parliament.

It seems clear, however, that the personal preferences of the Kings of Wessex formed a main factor in determining the membership of their Councils, and that the early rulers of the Norman dynasty also retained a preponderating influence over the assemblies of their feudal barons. Few great men were great enough to force their presence on an unwilling King, while the monarch had power to raise up even from the dust those he desired to honour, and invite them to join as royal thegns the councils of the nation. The right of the King's servants to be present among the Witan is beyond question, and their predominance in number must be taken as showing that the House of Lords began its long career mainly as an assembly of royal nominees, tempered by the

official element, represented by the prelates on the one hand and the ealdormen or earls—governors of provinces or counties—on the other.

The hereditary element was thus by no means the dominating feature of the House of Lords in its earliest stage of development. The thegns originally owed their position to the King's personal selection, while the office of Earl did not necessarily pass from father to son, and was almost as little regulated by hereditary principles as were the appointments to bishoprics.

The nobility—if such a phrase may be permitted of the eleventh century—was a nobility of service rather than of birth. It is true that the hereditary principle, from an early date, forced itself into prominence ; but it was long before it came to dominate the situation. On the contrary, the ancient nobility of service gave way to a nobility of landowners, before that in turn gave way to a hereditary nobility.

After the Norman Conquest the King's Council, or Curia, was primarily an assembly of feudal Barons ; and a Baron at that date may be defined as anyone holding land directly from the Crown. Earls and Bishops were present too, but each of them held Crown lands—Earl's baronies and Bishop's baronies. Debatable questions need not be here raised ; as to whether, as Professor Free-

man maintained, the prelate owed his seat in the King's Council to his spiritual office or, as other writers insist, to the possession of the lands which necessarily accompanied it. As plain matter of fact, the Council, or embryo Parliament of the Norman Kings, was an assembly of Crown vassals. Every man present held land of the King, whether he was summoned for that reason or for some other.

The smaller Crown landholders (*barones minores*) soon sank back into the class of ordinary knights, while the title of "baron" was reserved for those who held important fiefs under the Crown—the line, it is true, being drawn for long in a somewhat wavering fashion. Magna Charta in 1215 confirmed and stereotyped the practice whereby only those recognised as greater barons were individually summoned to the Council, while the lesser Crown tenants, summoned collectively, soon lost by neglect their right to attend.

Hitherto the Council, or fledgling Parliament, had consisted only of one Chamber, made up exclusively of those who held baronies. It was during the thirteenth century that representatives of the counties and chief boroughs of England took their place as essential members of a national Parliament; and during the reign of Edward III. that Parliament itself took the form it has since

retained, for many centuries, of a two-chambered assembly. Long after that change had been effected, the Upper House remained (as the entire assembly had previously been) a Council composed of the holders of baronies.

The conception of a barony, however, has passed through various phases:—

(1) "Barony by tenure" was the original conception. A baron was at first the owner of a Crown fief which from its extent or importance, had acquired a prescriptive right to be treated as a barony. When such lands fell to a lady, her husband was occasionally summoned by the King, for the word "baron" did not yet denote any personal dignity. This conception, though gradually jostled aside by rival conceptions, only became finally extinct in comparatively recent years. Although the judges had declared in 1669 that baronies by tenure "had been discontinued many years," and could not be revived, the point was indirectly raised again by the claimant in the Berkeley Peerage case in 1861, to be finally set at rest by an adverse decision.

(2) "Barony by writ of summons" succeeded the conception of barony by tenure. Every holder of a barony had the right under Magna Charta, to receive a royal writ individually addressed to him, whenever Parliament was called together.

The reception of such a summons, combined with the fact that it had been acted on in practice, came to confer upon the person so acting a complete title to the rank of baron—and this right descended to his heirs for ever. The King gradually lost the power to refuse his summons to these individuals and their heirs, but retained his unfettered right to summon, in addition, whomsoever he desired. At this stage in the development of the House of Lords it is clear that its composition was determined by the combination of the two principles of hereditary descent and the royal right of summons.

(3) Meanwhile "Barony by patent" had succeeded barony by summons. The Crown gradually adopted the convenient method of issuing letters patent in favour of those individuals whom it desired to raise to the position of hereditary councillors. The new method was first adopted in 1387, and the ancient way of creating barons by writ of summons was allowed to lapse. Long before these changes had occurred, all connection between the title of Baron and the ownership of land had come completely to an end. The conception of an Earldom had also suffered change. The character of an Earl or Count, who had been at first a magistrate appointed by the King to rule a county, passed through a feudal stage, and finally

settled into its present meaning of a special rank in the Peerage. These facts make abundantly clear the principle, often insisted on by Professor Freeman, that "the hereditary character came in like other things, step by step, by accident rather than by design."

These modifications in the nature of "Baronies" and "Earldoms," and the addition of other ranks of Peers, are by no means the only momentous changes that the House of Lords has suffered in the course of centuries, though limits of space confine us to a simple enumeration of a few of the historic landmarks that have influenced the composition of the Upper Chamber. The Reformation, accompanied by the ruin of the monasteries, removed the Abbots from their places in Parliament, and altered the proportions in which lay and spiritual lords had previously stood to each other. The bishops remained an influential minority, however, until deprived by the Exclusion Bill, which Puritan zeal forced through Parliament in 1642.

The lay lords, who agreed to the exclusion of the lords spiritual, did not long outlast them, but were contemptuously ejected in 1649 by the Lower House, or, rather, by that rump or remnant of it that had survived "Pride's Purge." Cromwell's attempts to establish a one-chambered Parliament,

or "Representative," as he preferred to style it, and his conversion to the need of an "Other House," require only a passing notice. At the Restoration the lay Peers resumed their attendance at Westminster, and took the necessary measures for repealing the Bishops' Exclusion Bill.

The next crucial change arrived with the Union of 1707, when the representative and elective principles entered the Upper House in the persons of the sixteen Scottish Peers, to be strengthened by the advent of twenty-eight Irish Peers in 1801. The same Union with Ireland also brought a slight increase to the lords spiritual in the persons of an Archbishop and three Bishops, who retained their places until the Irish Church Act of 1869 disestablished them along with their Church.

Meanwhile, in 1836 a new English See (that of Ripon) had been created, the first since the reign of Henry VIII., and the new Bishop took his seat in the House of Lords. An increase, even of one, in the lords spiritual was unpopular, and led to attempts to exclude the Bishops altogether. Subsequent statutes founding new Sees, such as that of Manchester in 1847, provide that the number of prelates in the Upper Chamber shall remain unaltered.

Membership then of the House of Lords is not confined to Peers. The Bishops, though "lords

of Parliament," do not even rank as life Peers, for they cannot retain their seats after resigning their Sees. Their title to membership is thus strictly an official one. The same character applied to the Lords of Appeal in Ordinary when first appointed in 1876, and therefore the statute of 1887, allowing them to sit and vote after resigning their salaried judicial posts, created a noteworthy precedent by introducing for the first time the principle of life membership pure and simple. A wider creation of life Peerages by Act of Parliament could not now be considered an innovation.

Two unsuccessful attempts to alter the composition of the House of Lords require brief notice. In 1719 (in consequence of the creation of twelve Peers to promote the policy embodied in the Treaty of Utrecht seven years earlier) Lords Sunderland and Stanhope introduced their famous Peerage Bill, which would have stereotyped the House of Lords by preventing all additions to its membership. The King might create six new Peers in addition to the 178 then existing, but thereafter must wait till an old Peerage lapsed before creating a new one to take its place. This ill-considered measure, which would have made the hereditary principle impregnable by removing its most formidable check, the Royal right of nomi-

nating new members, was only defeated by the eloquence of Sir Robert Walpole.

In 1856 an attempt was made to alter the balance between these competing principles in the opposite direction. The Ministers of the Crown, without statutory authority and against the wishes of the Lords, attempted to exercise an assumed right to appoint life members of the Upper Chamber. Baron Parke was created a life Peer under the title of Lord Wensleydale ; but the Lords adroitly parried this attack by deciding that whatever right the Crown possessed of creating Peerages for life, they would only admit to membership of the House those who were made hereditary Peers in the accustomed way. Act of Parliament, however, can create life Peers if prerogative cannot.

Finally, one vital reform was effected by the House itself in 1868, when it changed its Standing Orders so as to prevent noble Lords from voting without taking the trouble to attend. Proxies were then abolished.

The chief lessons suggested by this brief outline are that the House of Lords was not originally formed on the hereditary principle ; that it has never been identified exclusively with that principle ; but that there are rival principles capable of being strengthened or revived in its composi-

tion, without doing violence to the historical traditions of a venerable institution which has, at more than one crisis in the past, advanced the cause of constitutional liberty, and may be destined to perform valuable services in the future.

IV.

THE POWERS OF THE LORDS IN RELATION TO THE LOWER HOUSE: A HISTORICAL OUTLINE.

The present generation tends to exalt the House of Commons as pre-eminently the People's Chamber, and to decry the House of Lords as merely a Chamber of Privilege. Whether or not this somewhat crude antithesis holds good to-day, it certainly did not always hold. Prior to the Reform Act of 1832 the Lower House was as much a stronghold of the Whig oligarchy, who then ruled England, as was the Upper House.

The two Chambers in the course of ages have suffered many alterations in their composition and in their relations to the mass of the people, but in no respect have there been greater changes than in the apportionment of power between the two. The Upper House, as the lineal descendant of the Council of the Norman Kings—to go no further back—is by many centuries the more venerable of

the two ; the Lower House, having come into being in the thirteenth century, and having attained a separate existence in the fourteenth, during the reign of Edward III.

The entire subsequent career of the Commons has been one of aggrandisement at the expense of the Lords. The history of the Lower Chamber is a record of how it first gained equality of power with its older fellow-Chamber, and then attained supremacy. This process still goes on ; and the more the Upper House has resigned itself to a position of inferiority and to the diminution of its authority, the more has the Lower House in recent years grudged to the Lords the exercise of the powers still legally vested in them—a meagre residue of the ample authority formerly enjoyed. The salient points in the past history of the two Houses should be borne in mind by those who seek to readjust their relations for the future.

The representatives of county and borough, destined to form the future House of Commons, owed their inclusion in the English national Councils (previously the monopoly of the barons) to the Crown's anxiety to find the most convenient method of taxing them. They were summoned at first by the Plantagenet Kings of the thirteenth century—Henry III. and his son Edward—not that they might share the authority and responsi-

bility of baron and prelate, but only to vote their contributions to the Royal Exchequer and then disperse quietly to their homes again.

Gradually, however, they came to participate in every one of the important functions exercised by the Council—or almost every one, for the judicial functions of Parliament remained a monopoly of the Upper Chamber. They claimed rights of free discussion and other privileges. They even exercised some measure of control over the policy of the Crown, and they established a firm right to concur in the passing of all new laws. This last and most important right, enunciated formally in 1322, was finally secured under Henry VI., when the early form of legislation by petition and answer was superseded by the modern bill.

Meanwhile the Commons had begun to gain for themselves a superior position to the Lords in matters of taxation by successfully asserting, as they did in 1407, that all grants of money must originate with them. That was the beginning of the rule still prevailing which secures to the Lower House the sole right to initiate money bills.

In 1671 and 1678 the Commons entrenched themselves behind a new privilege, denying all power of amending money bills to the Lords, who were thus left with the alternative of accepting such bills as they stood or rejecting them whole-

sale. The Lords have never formally admitted this disability, but have been held as tacitly acquiescing in it, because they have shrunk in practice from a collision with the Lower House on this question of amending money bills.

By the reign of William of Orange this disability was generally recognised, and the Commons took unfair advantage of it, "tacking" non-financial measures, obnoxious to both Crown and Lords, to the end of money bills, and denying to the Lords all right to amend any part of the patchwork whole. This was discontinued in deference to the firm attitude of the Upper House in 1702, when they declared such practices unconstitutional. It is true that difficulties still continued as to the exact definition of "money bills," difficulties which the House of Commons sought to remove by revision of the Standing Orders in 1831, 1849, and 1858. The scope of money bills was thus somewhat extended.

Until 1861, however, the Lords retained, practically unchallenged, the right to reject money bills, though they used this sparingly—some thirty-six times in the century and a half following the accession of George I. In 1860 Mr. Gladstone, as Palmerston's Chancellor of the Exchequer, proposed to abolish the paper duties. He met with strenuous opposition, and on the third reading

of his bill the Government majority sank to nine.

The Prime Minister admitted in a private letter to the Queen that under changed conditions he would welcome the defeat of the measure. In this he reckoned without his Chancellor of the Exchequer. When the Lords, with their long array of precedents behind them, threw out the bill, Mr. Gladstone characterised their exercise of an admittedly legal right as "the most gigantic and the most dangerous innovation that has been attempted in our time."

Next year the whole of the financial proposals were introduced in one long bill; and the Lords, unable to amend and unwilling to take the responsibility of wrecking the entire scheme, allowed the bill to pass. The precedent has been uniformly followed since that date. Mr. Gladstone thus rendered practically inoperative another right of the Upper House. They have never since rejected a money bill.

Long before 1861 the Lords had lost another of their ancient functions—the control of the Executive. The beginning of the doctrine that the Crown Ministers are responsible to Parliament has sometimes been dated from 1660, sometimes from 1688, and sometimes from a still later date. Whatever may have been the date of its com-

mencement, Parliamentary control was at first shared between the Lords and the Commons.

In 1712 the support of the Upper House was considered so essential that new Peers were created to give the Tory Government a Tory majority in both Houses. Again, in 1783-4, the elder Pitt remained in office, resting on the support of the Lords, in face of repeated adverse votes in the Commons. Even in 1832 Lord Grey resigned in consequence of an adverse vote in the Upper House. The circumstances were, of course, peculiar ; and, since the Reform Act of that year, the Commons have successfully monopolised Parliament's control over the Executive.

The appetite of the Commons has grown with what it fed on. Far from content with the steps, sometimes rapid, sometimes slow, whereby they have dethroned the Lords, they have shown themselves increasingly dissatisfied with the vestiges of power still left to the Upper House. The grounds of quarrel between the two Chambers in the past need not be given in detail, nor yet the ancient methods of effecting a reconciliation by means of conferences and other obsolete expedients. The dangerous device of "swamping the Lords" is still open in theory ; but "an appeal to the country," followed by the acquiescence of the Lords in the popular verdict, is the practical

and sufficient safeguard provided by the modern constitution.

The history of the last three-quarters of a century records numerous attacks made by the Lower Chamber upon the Upper. A brief recapitulation of these may not be without its lessons at the present time. The movement for reform that culminated in the Act of 1832 was repugnant to a great majority of the Peers, and thus came to be accompanied by a vigorous crusade against the Upper House.

The Lords under Wellington's leadership bent to the storm, allowing a bill to become law of whose principles they thoroughly disapproved. In absenting themselves from the House when the final vote was taken, they acted under the influence of a patriotic determination rather to efface themselves temporarily than to run the risk of revolution or civil war. They were probably unaware that they thus ushered in a new era in the relations of the two Chambers; but the precedent then tentatively set, under stress of untoward circumstances, has become a binding one on questions where the nation has formed a mature and abiding determination.

The next important crisis in the relations of the two Houses came in 1869 over the disestablishment of the Irish Church. Once again the Lords

in deference to popular demands gave in to a measure of which they emphatically disapproved, but not until their firm attitude had extorted more liberal terms in regard to the question of compensation. In respect of this they may be said to have forced a compromise upon the Commons, who triumphed, however, on the question of principle.

In 1884 the Lords showed once more that they had no intention to resign their legal rights in legislation, and were successful in forcing Mr. Gladstone's Cabinet to agree to supplement their Franchise Bill by a bill effecting a thorough redistribution of seats.

The year 1888 was notable alike for the introduction of the first Home Rule Bill and for renewed attacks upon the Upper House. Mr. Labouchere carried a resolution in the Commons that the presence of hereditary legislators in Parliament was "contrary to the true principles of representative government and injurious to their efficacy"; while, in the other House, three different schemes of reform were suggested by Lords Salisbury, Rosebery, and Dunraven respectively.

Mr. Gladstone's first Home Rule Bill had met its fate in the "Popular Chamber," but the responsibility of defeating his second bill was thrown upon the Lords, who rejected it on September 8,

1893. Until a General Election occurred, two years later, there were no means of judging whether the majority of British voters approved or disapproved this action ; but the House of Lords was immediately and bitterly assailed as deliberately defeating the undoubted and steadfast decision of the nation.

When the Queen's Address was discussed in 1894 Mr. Labouchere carried in the Commons, by the narrow majority of two votes, an amendment demanding that the Lords should be deprived of what he described as their "right of veto."

Mr. Gladstone, on March 1 of the same year, on the historic occasion on which he bade farewell to the scene of many triumphs, delivered in impassioned periods what has been described as "a declaration of war against the House of Lords"; and Lord Rosebery, in July, 1895, insisted that the real issue before the nation at the forthcoming election was the question of the Upper Chamber.

In this he may have been mistaken ; but, in any view, the voters decided against him with no uncertain voice.

For the next decade comparatively little was heard of the once famous phrases of "filling up the cup" and of "mending or ending," until the firm attitude of the Lords towards the Education Bill and other measures promoted by Sir Henry

Campbell-Bannerman's Cabinet led to a new attack, embodied in the words of the House of Commons' Resolution of June 26, 1907.

The trend of events, thus viewed as a whole, would seem to suggest thoughts that are more disquieting to the friends of the Upper Chamber than to its enemies. For centuries past, the extent of the powers actually enjoyed by the House of Lords in relation to the Commons has steadily diminished. The only serious checks to its gradual decline have been the result of attacks made upon it, as, for example, in the years 1893-95. Those who favour violent measures against the House of Lords ought perhaps to draw the inference that their wiser course would be to leave it severely alone, trusting to the operation of the natural forces of decay which they decern at work undermining its authority.

All recent changes in precedents and constitutional conventions, affecting the distribution of power between the two Chambers, have been in favour of the Commons ; and the necessity of taking action would seem to lie with the friends of the Second Chamber. These friends would be well advised to place the composition of the House upon a broader basis, if they desire to preserve intact the powers still left to it.

V.

A COMPARISON WITH FOREIGN UPPER CHAMBERS.

Foreign parallels are apt to prove deceptive in treating of a system so distinctive and unique as the British Constitution. There may, therefore, be some ground for the prevailing insular prejudice against adopting or even unreservedly admiring Continental expedients where precedents for alternative schemes of reform are furnished by British history in abundance.

Yet it would be foolish to refuse altogether to profit from the lessons learned by other nations in their efforts to settle the relations between the two Chambers of their Legislatures. Foreign evidence must, however, be interpreted in the light of the essential differences separating British institutions from those of the various nations concerned.

In particular, all lessons drawn from the powers and composition of those Senates that are constructed on the federal principle must be used

with caution. This warning applies with especial force to the German Imperial Bundesrath and to the Upper Chamber of the Congress of the United States, each of which enjoys not only greater authority in making laws than does the British House of Lords, but shares, in addition, in the work of the Executive, exercising, *inter alia*, the right to concur in the making of all treaties.

I. With these warnings before us, we may proceed to a brief comparison of our own with foreign Upper Chambers in respect of the amount of authority enjoyed on the one hand, and of the principles that determine membership on the other. The powers of Continental Houses vary considerably from case to case ; but if a balance were struck among them, the average so arrived at would show the relative weakness of our House of Lords as compared with foreign Senates. Only one Upper Chamber, that of the Netherlands (which cannot amend ordinary bills) enjoys less constitutional authority than the British House ; while the majority of such Chambers, including those of Germany, France, Austria, Prussia, Switzerland, and the United States, possess more.

As there is at present no question of increasing the powers of the House of Lords, it will be unnecessary to dwell at any length on this aspect of the question, or to do more than point out briefly

that any fourteen members of the German Bundesrath (out of a total membership of fifty-eight) have the absolute right to veto all constitutional change; that the Upper Chambers of Germany, Austria, and Prussia may initiate money bills; that those of most Continental countries, as well as that of the United States of America, may amend such bills as well as reject them; that the last-mentioned Senate is generally "considered to be a more powerful body than the House of Representatives"; and that the President of Republican France cannot dismiss the Chamber of Deputies and appeal to the country without the consent of the Senate, which may thus not only delay the bills passed by the Lower Chamber until ratified by a new General Election, but may actually delay that election, preventing the nation from at once expressing in a constitutional manner its opinion on the point at issue between the Houses.

By its firm attitude in 1896 the French Senate compelled the Cabinet of M. Bourgeois to resign office in spite of the fact that his Ministry still retained the confidence of the Chamber of Deputies.

The feeling in favour of a strong Second Chamber on the Continent seems even to be growing, for an arrangement has recently been made between the two Houses in Austria, whereby

the power of the Herrenhaus will be considerably augmented. In Switzerland both Chambers enjoy an exact and jealously guarded equality in every respect, to such an extent that it is more accurate to speak of two co-ordinate Chambers than of a First and a Second Chamber ; and yet no conflicts have arisen within the last ten years.

Switzerland is a small country ; but in the United States of America, the Senate (though debarred from introducing Money Bills) enjoys, in popular estimation, an equal authority with the House of Representatives. Professor Bryce, the present Ambassador to the States, passing over the case of Switzerland, states in his standard treatise on the American Constitution that " the United States is the only great country in the world in which the two Houses are really equal and co-ordinate."

He adds that such a system, possible under Presidential government, is inconsistent with Cabinet government as we have it in this country. In Mr. Bryce's words, " Such a system could hardly work, and therefore could not last, if the Executive were the creature of either or of both [Chambers], nor unless both were in close touch with the sovereign people." The British system of party government requires that the Lower House should retain its present pre-eminence over the Upper House.

In light of the relatively favoured position enjoyed by most foreign Upper Chambers, as compared with our own, it is apparent that English reformers will not find in this direction much to serve their purposes, at a time when politicians on one side are calling loudly for a decrease of existing powers, while some argue on the other side that an increase of the Lords' authority might lead to deadlocks with the Lower House, holding, in the paradoxical phrase of a recent writer (Mr. Sidney Low), that "the strength of the House of Lords is in its weakness."

II. On the question of the ideal constitution of an Upper House, on the other hand, the expedients adopted in foreign countries afford only too prolific a crop of suggestions for the amendment of our own. The various possible principles on which a revising Chamber may be constructed are found combined in perplexing variety. A good-sized volume would be necessary to do justice to their various refinements and details, while a mere synopsis of results would tend to confuse rather than to instruct. It will be better, under the circumstances, to pick out for emphasis a limited number of such peculiar features of foreign countries as suggest valuable lessons to British reformers.

The great size of the House of Lords, consisting as it does of more than 600 members, is often

considered a bar to the effective discharge of its duties as a suspending and revising Chamber, and this defect would undoubtedly be more forcibly felt if all the Peers availed themselves habitually of their rights as hereditary legislators ; while the rapid yearly increase to their numbers does not allay the evil.

A reference, in this connexion, may not be out of place to the policy of Hungary, which, in 1885, reorganised its House of Magnates (whose membership originally embraced even the younger sons of all Princes, Counts, and Barons), reducing the number of hereditary legislators from some 750 to about 400 by the introduction of a property qualification. This made it possible, without increasing the Upper House to an unwieldy size, to find room within it for the presence of official members and for others who sit there either by Royal appointment or by virtue of election.

It should not be forgotten, however, by those who desire to effect drastic reductions in the membership of the existing House of Lords, that experience has shown that, *ceteris paribus*, a small legislative body is stronger than a larger one. This is one of the causes that have contributed to the superiority enjoyed by the American Senate in competition with the much larger House of Representatives.

An extended study of the Legislatures of foreign countries would afford abundant illustrations of the practical working, in various combinations, of the different principles which it is possible to introduce into a Second Chamber.

The hereditary and landowning principles—which may for convenience be taken together (under certain constitutions, indeed, like that of Würtemburg, loss of lands implies loss of hereditary legislative rights)—are found in the Austrian Reichsrath, the Bavarian Landtag, and the Prussian Herrenhaus, in all of which officials and Royal nominees are also present; while in the Hungarian House of Magnates and the Spanish Senate all these principles are combined with that of election—not, of course, involving any suggestion of election on a popular franchise.

In not one of these foreign Upper Chambers, however, is the proportion of purely hereditary legislators to the total membership so great as in the British House of Lords.

In Italy, again, nomination by the King, on the advice of his Ministers, has been adopted as the sole title to membership of the Upper House; but the law has carefully restricted the list from which appointments may be made to twenty-one categories of distinguished individuals, who are reckoned as possessing special though varied

qualifications for the position. The principles of nomination and election (on a restricted franchise) determine the membership of the Danish Landsting, while Belgium, France, Sweden, Switzerland, and the United States have entirely rejected the hereditary, official, and nomination principles in favour of election pure and simple. Each of these countries has two elected Chambers, on a more or less extended franchise ; although the methods of election, the qualifications of the electors, the periods of office, and the number of the Senators vary in each case.

The position occupied by the American Senate, as the protector of the rights of the separate States of the Union, is well known ; and so also is the system of electing the 300 Senators of France by Electoral Colleges, which are composed on an elaborate system, and have not become a mere disguise for popular election like the institution, bearing the same name, which registers votes for Presidential candidates in the United States. The precedent set by these French Electoral Colleges, which have been, since 1884, entrusted with the election of the entire number of Senators, might possibly be followed in respect of the elected quota of a reformed English House of Lords of the future. In that light their constitution becomes of special interest.

Each College, meeting in the chief town of the Department, is composed of (1) the Parliamentary Deputies ; (2) the members of the Departmental Council ; (3) the members of the District Councils (Conseils d'Arrondissement) ; and (4) communal delegates selected by each Municipal Council.

In view of the suggestion occasionally made that the British Colonies should be represented in one or other Chamber of the Imperial Parliament, one provision of the French Constitution is full of suggestiveness ; each of the four Colonies of Martinique, Guadeloupe, Réunion, and French India is allowed to appoint one Senator. An equally interesting suggestion comes from Sweden, where the 150 members of the Upper House are appointed by local bodies known as County Councils, which are not, however, to be rashly confused, either as to functions or as to composition, with institutions bearing the same name in England.

If stress, then, is to be laid by reforming zeal on the finding of Continental models on which to reconstruct the Upper House of that Mother of Parliaments to which foreign constitutions owe so deep a debt, there is no need for anxiety. Analogies may be found for almost any combination of the various principles in bewildering variety.

Two features may, perhaps, be singled out for

concluding notice. Our House of Lords would seem to exert less authority in comparison with other Upper Houses than is the case in any Continental nation (with the single exception of the Netherlands); while, on the other hand, the hereditary principle, pure and simple, is more prominent in the British House of Lords than in any foreign Senate or Upper Chamber. It is a point for consideration how far these two features may or may not be connected, and therefore whether a radical reduction in the hereditary element might not tend to strengthen a Chamber now suffering attack on the ground that it is too strong. The experiences of Würtemburg in this respect may not perhaps be without their lessons, where a crusade against the Upper Chamber in 1904 led to alteration in its composition, followed by a considerable and unexpected increase in its authority, and therefore of its power for good and evil.

Reforms have sometimes brought results that were not anticipated by those who laboured to effect them. The problem at present before the country is to devise a Second Chamber sufficiently strong to act uniformly and fairly and with practical efficiency as a revising Chamber, and yet not strong enough to enter into serious rivalry with the House of Commons.

VI.

VARIOUS PROPOSALS AND SCHEMES OF RECONSTRUCTION.

Historical precedents and foreign parallels are worthy of consideration. Many advocates of reform prefer, however, to argue on grounds of inherent probability, anticipating experience and deducing rules of utilitarian policy or abstract right from the acknowledged principles of Political Science, or even from their own individual preferences and prejudices.

Such arguments are, within certain limits, perfectly admissible. No suggested scheme of reform should be contemptuously set aside as impracticable because it has never yet been tried. Abstract political reasoning, and even the making of experiments on a large scale, are allowable in the science of government as in other sciences ; yet it may be wise to remember that the complexity of the problems and the extent of the interests here at stake make caution peculiarly necessary.

It is now proposed briefly to discuss, apart from considerations either historical or international, a few of the schemes of reform that have been suggested within the last quarter of a century. Such schemes are to be found in bewildering profusion in the columns of Hansard and the pages of numerous books and magazines ; the only difficulties are those of selection and arrangement. The subject naturally divides itself into three parts ; for one group of reformers would reduce the powers of the Upper Chamber ; another would remodel its constitution ; while both parties must concern themselves with methods of procedure.

I. Advocates of a further diminution of the comparatively slender powers still left to the House of Lords are not to be found exclusively among the ranks of those who wish it ill. The late Professor Lecky, for example, would have welcomed such a course as calculated to strengthen the House rather than diminish its authority. "The very magnitude of the power," so he has written, "theoretically vested in the House of Lords is an obstacle to its moderate exercise"; and, again, "a veto limited and defined by law would be more fearlessly exercised and more generally accepted."

The arguments urged in favour of an agitation for reducing the legal powers of the Peers are

usually, however, of an entirely different complexion. Among Labour leaders and advanced Radicals there are those who would abolish altogether the legislative rights of the Upper House, a course open to all the disadvantages of abolishing the Second Chamber outright, and with additional dangers of its own. Next to these annihilators of the veto come those who would retain it in appearance, but render it inoperative in practice. Whether to give effect to the resolution carried by the Government in the House of Commons in June, 1907, would amount to this in practice is a question which has been raised already, and one which every politician must attempt to answer for himself.

Other schemes of reform, which have been suggested at various times, would deprive the Lords of their right of veto only in certain circumstances ; for example, where bills had passed the Commons not merely by a bare majority, but by three-quarters or two-thirds of the whole House. The most obvious objection to such a course would be that in some cases, and those perhaps where a drag was most imperatively needed, the Sovereign Parliament would be practically reduced to a one-chambered assembly. A popularly-elected chamber, newly returned by an overwhelming majority of excited voters, at a time perhaps when

the war fever was in the air, or when exaggerated rumours had produced a hysterical condition of the public conscience, might be specially in need of time for cool deliberation, at the very moment when the magnitude of the majority in the Lower Chamber automatically paralysed the House of Lords.

Certain reformers, again, would allow bills to be rejected only by an overwhelming majority of the Upper Chamber, which would thus retain its veto unimpaired in all cases ; but could exercise it in none, unless by the concurrence of two-thirds of the House, or such other proportion as might be fixed. All such schemes have been adversely criticised on the ground of their inherent artificiality. There seems no special reason why a mechanical majority of two-thirds should be fixed rather than one of eight-fifteenths or of three-quarters, when once we have departed from the principle of a simple majority, which after all expresses in some measure the mind of the assembly considered as a corporate whole. Further, if it is difficult or impossible at present to stimulate a simple majority of the Lords to throw out a Tory bill, it would be even more difficult to obtain a two-thirds or three-quarters majority for such a purpose.

Other schemes, which need not be discussed in detail, would distinguish between bills altering the

fundamentals of the Constitution and ordinary bills, leaving the Lords with control over the former but not over the latter ; or would provide that, where a difference of opinion leads to a permanent deadlock, the matter should be determined by the formation *pro hac vice* of a special chamber containing the members of both Houses, a majority of the total votes in which should finally decide. Lastly, there is the proposal—of such inherent interest that it will require an entire section to itself — that a popular Referendum should be resorted to whenever a deadlock occurs between the two branches of the Legislature.

These expedients are not necessarily mutually contradictory. On the contrary, most of them are capable of combination with one another so as to form an almost bewildering profusion of more or less elaborate schemes. It is unnecessary, however, to enter this labyrinth in the meantime.

II. Another and usually less hostile type of reformer, while leaving the powers of the House untouched, would alter its composition. Some, indeed, would not rest content with alterations, but would sweep away the old institution and erect a new one in its place. The most usual suggestion for accomplishing this root-and-branch reform is that the hereditary principle should be abolished

in favour either of popular election or of Ministerial nomination or of both combined.

Quite apart from the fact that such a scheme would effect an annihilation rather than a reformation, and could only be carried by a revolution, it presents other features that are open to criticism. A second elective Chamber is apt—as has been the case in Belgium—to claim equality with the first or popular Chamber. Such a result would be unpleasing to the well-wishers of the House of Commons ; and might tend to a dislocation of both home and foreign policy, if British Ministers were required to choose between two masters giving opposite commands.

A purely nominated Chamber, on the other hand, would be a packed Assembly of supporters of the Ministry, who would then, under modern conditions, wield absolute authority over both Houses of Parliament as well as over the Crown's right of veto, securing an unrestrained control over the various factors into which the wisdom of our ancestors had split up the legislative omnipotence of Parliament.

A solution so fraught with danger to the national liberties and to national stability could not readily be advocated by any responsible statesman, except perhaps immediately after a General Election when flushed with victory and elated by the new-born

"insolence of office"; for both Houses would thus become "pocket boroughs" under the Cabinet's control. The whole boasted system of "checks and balances," the glory and the safeguard of the British Constitution for many centuries, would be at an end. The powers so carefully separated from each other and entrusted to different hands would be pieced together again and placed at the absolute disposal of the Ministers of the Crown.

The numerous schemes of reform put forward during the last twenty years have usually proceeded on lines less dangerous and more feasible, and most of them have at least this much in common that they would reduce the hereditary element without abolishing it, and fill up the vacancies so created by the addition of new members owing their seats to one or more of the other principles at present inadequately represented in the Upper Chamber. These other principles may be summarised as delegation, nomination, office, and election.

1. *Delegation.*

It has been proposed that the 543 hereditary Peers who sit at present in their own right should delegate their authority to a smaller number of their own selection, thus cutting down the present

membership of the House to two-thirds or one-half, or even one-third of its present size. Minor questions as to methods of selection need not meanwhile be discussed—whether or not the Peers of Scotland and Ireland should cease to be separately represented and throw in their lot with the other Peers ; whether the separate ranks of Dukes, Marquesses, Earls, etc., should have separate representatives ; whether the cumulative vote should be adopted, or whether some other device may be better fitted to secure the representation of minorities ; and whether any change should be made in the number or position of the bishops.

2. *Nomination.*

Room would thus be left for the introduction of new members according to one or more principles of appointment. Only a few of the numerous suggestions need be here repeated. Statutory power might be conferred on the Crown to create a more or less numerous body of life Peers, so many to be appointed each year or under such other restrictions as might seem good. The field of selection, for example, might be confined—according to the Italian precedent—to individuals who had held definite official posts or had served the community in some capacity to be specifically mentioned in making the appointment. All the

nominated members, however, need not be made life Peers or even life members. Some might merely hold office during one Parliament, or for a definite number of years. If it were desired that our self-governing Colonies should be represented in the Imperial Parliament, the Crown might be required to select a specified number of these nominated members from lists supplied by the Colonial Legislatures.

3. *Qualification by Office.*

The introduction of the official principle pure and simple has also been advocated, but is not without its dangers. It might tend, on the one hand, to dissipate the energies of the individuals thus honoured, especially where the seat of their official duties lay remote from Westminster ; and, on the other hand, it would create an almost irresistible temptation to make these particular offices the reward of services rendered to the party in power. These dangers would be to some extent obviated by allowing the official principle to be combined with that of nomination. Life Peers would naturally be chosen in great measure from present and past holders of the more important diplomatic, judicial, military, or civilian posts.

Somewhat similar objections apply to a proposal which was prominently before the public twenty

years ago—to wit, that the convenership of a County Council should carry with it a seat in the Upper Chamber of Parliament. This suggestion recommended itself to the historical imagination of Professor Freeman, who saw in it a return to the usages of the Anglo-Saxon Witenagemot, with its representatives of the shires in the persons of their Ealdormen or Earls. When Mr. Rathbone in the House of Commons in 1888, actuated by more prosaic considerations, proposed to give seats in the House of Lords to County Council conveners, Lord Rosebery "in another place" raised the pertinent objection that these gentlemen would be better employed in performing the local duties for which they were appointed, than in neglecting them for new responsibilities at St. Stephen's.

4. *Election by Outside Bodies.*

Any claims, indeed, which the County Councils may have to representation in the Upper Chamber might be more readily gratified by means of the elective principle. Each Council, or each group, say, of three, might be allowed to elect one "Lord of Parliament." There would seem, however, to be no sufficient reason for extending this privilege to the governing bodies of counties, while denying it to Municipal or even to Parish Councils; and if this particular reform were adopted the French

precedent might perhaps be profitably followed of forming in each district of convenient size an Electoral College, composed of the local members of the Lower Chamber of the Legislature, and of delegates appointed by the urban and rural councils of the district, in numbers varying according to their importance and population.

Important modifications of this theory, again, might be made, according as the field of selection allowed to these Electoral Colleges was restricted or unrestricted. Candidates for election to the Upper House might be required to possess certain senatorial qualifications in respect of age, wealth, experience, or office. It would even be possible to combine the elective with the hereditary principle by making membership of the House of Lords as at present constituted a necessary qualification for election to it as reconstituted in the future.

These are only a few of the suggestions that have at different times been made for the remodelling of the Upper House. The difficulty clearly does not lie in finding another principle to apply as an antidote to the preponderance of the hereditary element, but rather how best to choose wisely amidst the endless variety that presents itself. Among the most interesting schemes of recent years may be named Earl Russell's proposal in

1869 to authorise the Crown to appoint twenty-eight life Peerages (four a year) and the more limited scheme proposed as an amendment by Lord Cairns; the two elaborate reconstructions suggested by Lord Rosebery in 1884 and 1888 respectively; and those of Mr. Rathbone, Lord Salisbury, and Lord Dunraven in the year last mentioned; while Lord Newton laid the outlines of a new plan before the House in June of 1907. The recommendations of Lord Rosebery's Committee will be discussed in a separate section.

III. The means whereby reform is to be effected have also been the subject of discussion. Three methods of procedure have been suggested—by prerogative, by resolution, and by statute. (1) It is still occasionally argued that the Crown has the right to create an unlimited number of life Peers, who would also be life members. This opinion was shared and acted upon by Lord Palmerston and his legal advisers in 1856. A vigorous opposition, headed by Lord Lyndhurst, resulted in the adverse decision of a Committee of Privileges appointed by the Lords, who decided that in the absence of precedents for at least four hundred years the Crown had no such prerogative. These proceedings, known as the Wensleydale Peerage Case, finally settled the matter, for the Lords

exercise an exclusive jurisdiction over questions affecting the composition of their own House.

Another method of procedure by prerogative has been proposed, apparently in all seriousness, though intended rather as a means of compelling the Upper House to consent to its own reconstruction, than of permanently reconstructing it against its will. The Lord Chancellor is simply to refrain from summoning to Parliament such Peers as are likely to vote against Government measures ; and a purged House of Lords would thus be assembled ready to do as it was bid. The advocates of this expedient struggle to minimise the fact that when Charles I. refused a writ to the Earl of Bristol in 1626 the Lords protested, and showed that no precedent for such a course had been discovered during the preceding two hundred years. If any revolutionary Lord Chancellor could be found sufficiently reckless to adopt so violent and unprecedented a procedure, he would lay himself open to an action of damages at the instance of every Peer who had thus been deprived, by an administrative act, of his right to a summons.

The political and historical grounds of objection to such a course are as strong as the purely legal ones. To those who have profited by the lessons of English history in the sixteenth, seventeenth, and eighteenth centuries it would seem a mon-

strous and retrograde measure to allow the Executive to adopt any expedient which enabled it arbitrarily to exclude duly qualified members of either branch of the Legislature.

(2) To proceed by resolution of the House of Commons, followed by a referendum to the holders of the ordinary franchise, although apparently advocated by Lord Rosebery in 1895, would also be a dangerous and unconstitutional expedient. The House of Commons, though the predominant partner in a legally omnipotent Parliament, is not by itself omnipotent ; nor can it by the most emphatic of resolutions make itself omnipotent, or add in any respect to its own powers. This has been made abundantly clear in a series of legal decisions, beginning with the leading case of Stockdale *versus* Hansard in 1839 ; while the referendum, being entirely unrecognised by the present law of England, could do absolutely nothing towards turning an illegal course of action into a legal one. Procedure by resolution must thus be set aside as ineffective, unless it be considered merely as a preliminary to procedure by violence or threats.

(3) A third method of procedure—by statute—still remains, and is the only constitutional expedient available. It was at one time feared—and such fears are responsible for driving moderate-

minded men into a tolerance of extreme courses—that the House of Lords would render this method also ineffectual by obstinately refusing to consent to any Act of Parliament embodying a sufficiently thorough scheme of reform.

Such an attitude is perhaps no longer to be feared. The interests and the patriotic instincts of the Lords alike urge them to adopt an attitude more amenable to reason. That they no longer cling to a purely obstructive policy will be apparent from a brief reference to the progress made in recent years, within the House itself, by the movement in favour of reform. Lord Rosebery's motion of June 20, 1884, "that a Select Committee be appointed to consider the best means of promoting the efficiency of this House," was negatived by a majority of 39. Letters addressed by him in December of that year to a number of his brother Peers, inviting their co-operation in the work of reform, seem to have met with practically no response; and his motion of March 19, 1888, "to call attention to the constitution of this House and to move that a Committee be appointed to inquire thereon," was defeated by 97 votes to 50.

The progress made in twenty years is shown by the more favourable reception given to the resolution moved by Earl Cawdor, which, couched in somewhat similar terms, was carried on May 6,

1907, by a majority of 198 against 46, followed by the actual appointment of the Select Committee on Reform, which has now formulated its Report. Difficulties in plenty still remain to be overcome ; but the outlook for moderate reformers is brighter at the present day than it has been for many centuries.

VII.

THE REFERENDUM AS A MEDIATOR BETWEEN THE CHAMBERS.

Among the numerous expedients for preventing friction between the Houses of Parliament the Referendum is perhaps the greatest favourite with the educated public. Not only does it bring with it an atmosphere of reasonableness and plausibility, but it claims the merits of simplicity, directness of aim, practicability, and rapidity of action, without infringing on vested interests or involving organic alterations of existing institutions; while any disadvantages it may have are far from obvious to the casual observer.

1. *The Case for the Referendum.*

It is only within the last ten or fifteen years that the Referendum has come prominently before the British public, and therefore a short explanation of its leading features may not be out of place. Its general purport is clear enough; for while it is

capable of taking many different forms in points of detail, its essential characteristic is always the same. Entirely in accord with modern democratic conceptions of government, it provides that questions affecting the people should be referred to the people's own decision, that decision being ascertained by an actual adding up of votes cast on either side.

The Referendum in its best known form (as it exists in Switzerland, for example) may be defined as the requirement that all bills (or certain classes of bills), after being approved by Parliament, must, before they become statutes, be "referred" to the direct decision of those who possess the ordinary Parliamentary franchise. A plain issue of Yes or No is placed before each individual voter, and the fate of the measure depends on the result, as shown by a simple sum in addition and subtraction.

Such is the Referendum proper, in its simplest aspect known as the "obligatory" (or compulsory) Referendum, to distinguish it from the "facultative" (or optional) form of the expedient, where bills, not necessarily subject to the popular veto, may be made subject to it in certain conditions; for example, if so declared in the text of the bill itself, or, alternatively, if demanded by the written petition of a definite number of registered voters.

The theory of the Referendum (though not the

name) has been known for ages, and was definitely enunciated as a legislative device by George Buchanan, in the sixteenth century, in his famous *De Jure Regni*.[1] The honour of introducing it as a practical expedient in modern politics was reserved for Switzerland, where, after being tested in the separate Cantons, it was incorporated with the Federal system in 1848, and greatly extended in its scope in 1874. The existing Swiss Constitution legalises both forms of the Referendum—the compulsory and the optional. All constitutional changes require the endorsement of a majority of the electors, while since 1874 any measure whatsoever may be placed under the same necessity by the demand of 30,000 voters (or, alternatively, by the demand of a majority of the Cantons).

The Referendum, in a somewhat different form and not expressly under that name, is also in use in the United States of America, not in questions affecting the central or Federal Congress or the Federal Constitution, but in certain of the separate States of the Union, where the corrupt conditions that surround political life have led statesmen to devise additional checks upon the extravagance and occasional dishonesty of local Legislatures, particularly in their dealings with public funds.

[1] See Buchanan, *Glasgow Quater-Centenary Studies*, p. 243.

The Referendum in America is thus strictly limited in its application.

Although the principle is not one with which "the man in the street" in this country is yet familiar, the Referendum has found zealous advocates among a small but authoritative body of British publicists and politicians. Mr. St. Loe Strachey, the present editor of the *Spectator*, acclaimed it in 1894 as a convenient method of mediating between the two Houses of Parliament, at a time when the second Home Rule Bill was before the country. He praised it as embodying "the essential principle of democratic government," and also, with some exaggeration, as "an institution which democracies throughout the world are beginning to find necessary to counteract the accidents and eccentricities of representation."

Professor Dicey, without committing himself to a final verdict, has put the case for the Referendum with at least equal knowledge, if with greater caution.[1] Discussing its nature in words which more accurately fit the use made of it in Switzerland than the entirely different use to which it is proposed to apply it in England, Mr. Dicey has declared that "the Referendum is the people's veto; the nation is sovereign, and may well decree

[1] *Contemporary Review* for April, 1890, and the *National Review* for March, 1894.

that the Constitution shall not be changed without the direct sanction of the nation."

The same high authority specifies four respects in which he anticipates beneficial effects from its introduction into England. (1) By adopting the Swiss principle of differentiating between ordinary bills and those involving organic change, and applying the Referendum only to the latter, the Constitution would be protected, by the necessity of this Referendum, from the constant menace of a hostile Parliamentary majority in the Lower Chamber. (2) By putting one isolated and clearly defined question before the electors at a time, the Referendum would secure that each important bill should be decided on its own merits, thus avoiding the confusion of issues usual at a General Election, averting all danger of "log-rolling," and making it possible for a voter to condemn a particular measure without voting at the same time against the entire policy, executive and legislative, of the Ministry of the day; (3) equal weight would, he argues, be given to the wishes of all the voters, whereas at present the minority in a constituency are not really represented by a member elected in direct opposition to their votes; (4) it would enable, so Mr. Dicey is optimistic enough to hold, voters to vote for or against a measure on patriotic grounds, quite unbiassed by party pre-

judices or the desires of their party leaders. National interests would thus be placed above all factions.

This forms a somewhat ideal picture, and perhaps savours rather of the cloistered academic life, than of the rough-and-tumble of practical politics ; but the admirers of the Referendum are by no means confined to the ranks of University professors. Mr. Asquith has tentatively discussed its use as a possible solution of a pressing problem, although not unaware of its attendant dangers.

It is in favour with the Labour party in Australia, where it is viewed as a means of compelling the Upper Chambers to surrender to the Lower Houses of the various Legislatures. In Queensland such a measure has been recently recommended by the Ministry to the favourable consideration of Parliament.

The Referendum also finds supporters among a different type of politicians on the ground that experience has proved it to be essentially conservative in its operation in Switzerland, where its use is said to disclose three characteristics—" A dislike to large expenditure, a dislike to centralisation, a dislike to violent innovation."

Such merits, whether real or imaginary, are merely subsidiary. What chiefly recommends the innovation to English statesmen is the hope that it

might solve the problem of the strained relations of the two Houses of Parliament by referring to the people all questions of quarrel. In this view the arguments in its favour would at first sight seem to be unanswerable. A dispute has arisen ; the Commons claim that they alone can interpret the wishes of the nation ; the Lords declare that in this particular case they know better what the people really want (or what they will come to want if they are only given a little time for reflection). Surely this is a question that the people themselves alone can answer. Then—so the advocates of the Referendum triumphantly conclude — put the question to them direct. Let the voters come in their thousands and answer a plain "Yes" or "No." A simple addition does the rest. The crisis is at once at an end. Nothing—in theory at least—could be more simple or more easily understood.

2. *The Case Against the Referendum.*

Disadvantages begin to appear whenever we dive beneath the surface. Advocates of the adoption of the Referendum in England have been avowedly influenced by a belief in its success in Switzerland. It will be shown immediately that the conditions prevailing in the Swiss Republic are so entirely different that the analogy is a mislead-

ing one. Meanwhile it may be pointed out that acute observers in Switzerland, such as M. Droz, who has gained deserved distinction both as a publicist and as a practical statesman, become less inclined as time goes on to consider it an unmixed blessing. Four unfavourable features are pointed out: popular apathy, evidenced by the smallness of the average vote cast; the ignorance of the voters on the issues involved; the absence of opportunities for popular discussion; and a lowering of the sense of responsibility among the legislators.

The main question, however, is not how the Referendum has worked in Switzerland, but how it is likely to work under entirely different conditions in Great Britain. The boasted simplicity of the expedient as a method of deciding disputes quickly disappears when any serious attempt is made to show how it might be applied in practice to the conditions of our insular politics. In the first place, the quarrels between the British Houses of Parliament are rarely such as can be reduced to a simple question of Yes or No. Frequently, there are two bills before the nation, one promoted by the Lords and another by the Commons; or two versions of the same bill, the one as amended, the other as originally drawn. The question is not—Will you have an Education Bill? Yes or no? but rather—Is it bill A or bill B that you

prefer?—a very different issue, and one that the House of Commons might in many instances object strongly to place before the electors.

Further, the question thus put by no means exhausts the issues at stake. A majority of voters might be equally hostile to both bills—preferring a compromise ; while in certain cases a majority of voters might wish to maintain the *status quo*. To get at the real opinion of the nation, then, a series of questions ought to be asked—Do you desire some such bill at all? Yes or No? If yes, then, Will you accept bill A? Yes or No? Will you accept bill B? Yes or No? Will you accept something between the two, say bill X? Yes or No? What are the exact terms of the compromise of which you would approve?—a question incapable of a simple answer. Even omitting this last vital possibility of a compromise, it would be impossible to devise a ballot paper (or other mechanism of voting) capable of putting these issues in a manner so simple as not to perplex the illiterate or semi-illiterate voter.

These objections, when weighed at all, are usually pushed aside with the ready answer that what is possible in Switzerland is possible in England also. In Switzerland, however, the conditions are entirely different. There, before the "reference" takes place, all differences between the two

Chambers have been threshed out and ended. When the bill comes before the Swiss electors, it has already been approved by both Houses of the Legislature. It contains all the amendments and compromises which their united or divided wisdom has been capable of devising. The form of the bill is fixed and agreed to by both Houses. Parliament says to the nation—Take it or leave it as it stands. A simple Yes or No alone is asked for.

In England, on the contrary, it is proposed to use the Referendum in cases where the Houses have disagreed. In such cases the issue is rarely a plain one of Yes or No. Further, where the Houses have failed to agree as to the substance of the bill, it is more than likely that they would also fail to agree upon the exact form of the issue to be placed before the nation.

To allow the Ministry of the day, or (what comes practically to the same thing) to allow the Parliamentary majority in the Commons to determine the exact issue to be "referred," might at times place the Cabinet in an embarrassing situation, but would more frequently end in depriving the House of Lords of all power of amendment, leaving them with no means of forcing a compromise or of making their weight felt in Legislature in any form whatever.

The Commons, whenever a Referendum seemed

inevitable—and that would occur whenever the Lords refused to efface themselves—would reason, logically enough, that the Lower Chamber *plus* the popular vote could make any laws they pleased ; would laugh to scorn all suggested amendments ; and would draft the proposed bill exactly in such form as suited them, and then say to the nation—" There is the bill as we have framed it. If you do not take that exactly as it stands—however lop-sided, unfair, or extreme you may think it—you will not get any bill at all."

The electors, aware that a bill of some sort was imperative, and deprived of all power of amending it or even discussing it, would allow many a bad bill to become law, because they considered a bad bill better than none at all. The House of Lords, thus reduced to a negligible quantity, would drop out altogether from the practical machinery of the Legislature, which would then consist of two factors—the People's Chamber and the People. The latter, with no opportunities of debate and no power of amendment, could in no way take the place of a revising Chamber.

The British Parliament would become in practice a sovereign one-chambered Legislature, tempered only by the people's right of veto in cases where the issues were sufficiently grave to rouse them to repudiate the handiwork of their own accredited

agents. Of doubtful efficacy at any time, such a check would be entirely useless exactly at those periods of crisis when most required—to wit, immediately after a General Election fought out while the sound judgment of the public had been disturbed by passions that had not yet had time to cool.

It must not be presumed that the Referendum, in thus lowering the authority of the Lords, would correspondingly augment that of the Commons. It has been maintained on the contrary that the Commons, controlled by a Parliamentary majority, highly drilled by the discipline of party, would become a mere machine for registering the legislative decrees of any Cabinet that commanded a bare majority of voters.

The Ministers of the Crown, relying on a favourable Referendum, would then be everything: Parliament, nothing. A recently appointed Ministry, controlling the royal veto, wielding undisputed sway over the Lower House, and with the Referendum as a ready means of reducing the Lords to impotence, would hold in its own hand all the previously scattered fragments of the power of law making; and, having upset all "the checks and balances" that once formed the essence of the world-famous, British, "mixed Constitution," would enjoy the substance of legal omnipotence.

Sufficient has perhaps been said to show that the Referendum is not so simple in its application and effects as its innocent appearance would suggest. Its disturbance of existing conditions would not be the less profound, because it would be pervasive and subtle. The whole of the case against it has by no means yet been stated. A few of its further inconveniences and dangers may be briefly outlined. It would, for one thing, tend to paralyse any acute sense of responsibility in Parliamentary life; members of the Commons might justify their ill-considered or interested votes on the ground that the last word rested with the people—who must accept the final responsibility. The centre of political life would be shifted from the floor of the Commons to the polling booths. This would detract from that widespread interest in Parliamentary debates which has proved so educative an influence for the British public in the past.

Then, too, the constant resort to the Referendum, involving perpetual popular votes, and the concomitants of a General Election on a small scale over each contentious measure, would prove an intolerable nuisance in a country such as England, where legislation plays an important and constant rôle, and affects wide, Imperial interests. Whatever attempts might be made to control or

prohibit canvassing, each party would feel its honour at stake, and would use all means, open or covert, of influencing votes; political unrest would become the rule in place of the exception. It is doubtful even whether the Referendum would justify the expectations of those who maintain that the individual issue would be disentangled. Voting on a political question could hardly take place on anything except party lines without effecting a complete revolution in the habits and modes of thought of the British people.

It is difficult to see how the electors could reject a measure with which a Cabinet Minister had identified himself without forcing that Minister to retire from office; and that again, if the existing principle of the solidarity of the Ministry were preserved, would involve a complete change of Government.

Professor Dicey would obviate the intolerable annoyance of perpetual popular votes by limiting the operation of the Referendum to bills involving changes in fundamental constitutional principles; but two obvious difficulties would arise in carrying this distinction into practice. In the absence of a written code, there is no means of determining what are, and what are not, the essentials of the British Constitution, and any attempt to define these would lead to endless discussions, besides

destroying a leading feature of the Constitution—that reign or "rule of law" of which Mr. Dicey's own treatise is the classical exponent.

Further, quarrels between the Houses are by no means confined to "constitutional" questions, however that word may be defined; and, accordingly, to limit the scope of the Referendum, would be to limit also the scope of the proposed solution of existing difficulties. There would be no object in introducing so great a novelty into England if it failed to effect the chief purpose for which it is required.

The Referendum is open to a further set of objections, when we view it from a somewhat different standpoint. Depending as it does on the decision of a bare majority of votes it involves a narrow, metallic, or mechanical conception of that delicate organisation known as a Commonwealth, State, or Nation. The best method of realising the true principles of democracy may not be to accept absolutely the Yes of 20,000,000 voters and reject absolutely the No of 19,999,999; but rather to effect some equitable compromise—impossible under the Referendum—between the two. "The greatest good of the greatest number" may not always be best realised by a slavish obedience to the tyranny of the odd vote (or even of a majority of a few thousands out of a nation of many millions),

the result mayhap of ignorance, prejudice, or misrepresentation.

Even if we admit that democracy means obedience to the dictates of a bare majority of the people, the pertinent question still remains:—Who are the people? Are the voters of England, Scotland, Ireland, and Wales to determine what principles are to regulate the treatment to be accorded to natives of India in the Dominion of Canada? Must a question of Home Rule, as involving the practical abrogation of a treaty, be referred, in two separate applications of the principle, to the people of Ireland and to those of Great Britain respectively? If the men of Ulster claim exceptional treatment, can the principle of a separate Referendum be justly denied to them? Is a question affecting Presbyterianism in Scotland to be decided by a majority vote of English Episcopalians? Can the voting power of England be used to force upon Scotland a Small Holdings Bill of one type, while it adopts an entirely different bill to regulate its own affairs? It would seem that, whether for good or evil, the Referendum would involve the adoption of a modified form of Home Rule.

Most advocates of the Referendum have dimly perceived some at least of these objections, only to brush them aside on the plea that the experience of

Switzerland has proved them more illusory than real. Why cannot the British public do what the Swiss public have already done?

The answer is simple enough: the analogy completely breaks down. Not only is Switzerland a small country, without the complexities and imperial complications of British politics, but party government, which is of the very essence of our parliamentary system, is there non-existent. Again, the two Swiss Chambers are of exactly co-ordinate authority, in marked contrast to the inferior position at present occupied by the Upper House of the British Parliament.

These distinctions are so vital as to invalidate all arguments founded upon analogy, but a still more crucial distinction has yet to be explained, one which, it would appear, has hitherto escaped the notice of political theorists. The Referendum in Switzerland is a weapon placed in the people's hands to prevent the passing of bills of which both Houses have already approved. The Referendum as proposed for Great Britain would be a weapon placed in the people's hands for compelling the enactment of measures of which one House has finally disapproved. The one is a people's veto for preserving the *status quo;* the other would be a people's goad for hustling bills through Parliament that would otherwise be rejected. The one

is a weapon of defence ; the other of aggression ; the one entirely negative, the other entirely positive.

The effect of the Referendum in Switzerland is to add a third Chamber (to wit, the people in their masses) to the two ordinary Chambers of the Legislature. Its effect in England would be to reduce the Second Chamber to impotence. In Switzerland there are three bulwarks against innovation. In England there would be for practical purposes only one. The difference between the two systems is thus as emphatic as that between black and white.

Whatever advantages the Referendum may have, it is clear that it cannot be supported on analogies drawn from Switzerland. The numerous dangers thus seen to be latent in the system as applied to the British Constitution may perhaps yet be met by other arguments ; but until this has been done, the Referendum must be rejected as something worse than a mere leap in the dark. Its operation, on nearer view, turns out to be in no respect so simple, innocent, and innocuous as its modest appearance would at first suggest.

VIII.

SOME MAXIMS OF REFORM.

The attitude of the Abbé Sieyès towards the problem of a Second Chamber is one to be envied ; for, to him it presented no difficulties whatever. "If a Second Chamber dissents from the First, it is mischievous ; if it agrees, it is superfluous." It was on similar grounds that the contents of the Alexandrian Library, viewed as possible rivals to the teachings of the Koran, were committed to the flames.

For those students of politics who seek to reform rather than to abolish the House of Lords the problem has greater complexities ; and each reformer is at liberty to select from a mass of evidence (a small part of which has been collected in previous articles) such models as best conform to its own ideals or preconceptions.

Serious difficulties thus surround any attempt to formulate guiding principles in the abstract. Yet from among numerous expedients, supported

by argument or analogy, a few axioms seem to disentangle themselves ; and these may, perhaps, serve as a basis for discussion, if not as a common starting-point.

(1) The problem of reform must be treated as a whole. The view taken of the extent of the authority that may be safely or usefully vested in an Upper Chamber depends mainly on the uses to which that authority is likely to be put ; and that, again, depends on the personal idiosyncrasies of the men who compose it and the motives likely to influence their votes. In brief, the powers to be enjoyed will depend on the composition of the reformed House of Lords.

(2) It is always wise to remember what Lord Rosebery rightly described as " a cardinal principle of English politics—that you should respect old names and old traditions." Of two possible solutions, that which involves less disturbance will cause less friction, and will therefore be more practicable as well as less unpopular. Reformers of the House of Lords have to contend with two classes of obstructionists—obstructive Tories who, while grudgingly admitting the necessity of some alteration in the abstract, are ready to condemn every reform proposed in the concrete ; and obstructive Radicals who object to any device which, by improving the Lords, would relatively weaken

the Commons. A prominent Liberal Peer (Lord Monkswell) thus adjured his political colleagues—"Let us set our faces like steel against any proposition to strengthen the Second Chamber." In face of the double menace of this two-pronged opposition, it will be difficult for any measure of reform whatsoever to make its way through Parliament; and it is therefore essential that every unnecessary cause of stumbling should be excluded from any bill that is seriously intended to be made into a statute.

(3) Nothing should be done to disturb the clear preponderance at present enjoyed by the Lower House, alike in legislation and in controlling the executive. For the Upper Chamber to attain absolute or approximate equality with the Commons, as is the case in Switzerland and in the United States, would involve a radical alteration in the fundamental principles of the British Constitution. Representative government and the party system, as at present understood in England, would become impossible. Even if the anxious jealousy of the Lower House could be overcome it would be undesirable to add new powers to those at present enjoyed by the House of Lords. The *status quo*, with all its faults, has much to recommend it. The problem is to preserve the authority still possessed by the Upper House, while remov-

ing all reasonable grounds of complaint against the way in which it is employed.

(4) These considerations have a pertinent bearing on the problem of the proper size of an ideal Upper Chamber. Radical reductions in the nominal membership are frequently recommended, and should perhaps be deprecated on the double ground of interfering to an unnecessary extent with ancient traditions and of tending unduly to increase the authority of the Lords. It might be advisable, however, to prevent the Upper House from continuing to swell by annual accretions beyond its already unwieldy proportions of 600 members, or even to cut it down to a Chamber of 350 or 400. An assembly of 100 or 150 carefully selected Senators, on the other hand, might be dangerously small, since the decision of such a body could not fail to carry enormous weight on questions of national and Imperial policy.

(5) The substitution for the present House of an entirely elective Second Chamber would be foreign in an equal degree to Radical and Conservative ideals ; for such an Upper House would be encouraged by the support of its constituents to place itself in opposition to the Commons, while the dislocation of the existing conditions of political life in Great Britain would be complete. The late Lord Salisbury contended with much force in 1888

that the only type of House capable of co-operating with the Lower House, without exciting its jealousy, was one composed of persons marked out by birth alone. If he went too far in this, it seems certain that the competition of a purely elective Second Chamber would be certain to excite the jealousy of the Commons.

(6) To exclude the hereditary element entirely from the Upper Chamber would, even if practicable, be open to numerous and serious objections; for not only would this amount to a virtual destruction of that part of the Constitution, which, next to the Monarchy, is the most venerable of all, but it would materially weaken the prestige, political and social, of Parliament as a whole, lessening the social attractions of politics as a career, and lowering the standard of public life.

(7) It by no means follows that the Upper Chamber ought to retain its present preponderatingly hereditary character. On the contrary, Lord Rosebery in 1888 rightly attributed "the weakness of the House of Lords to its indiscriminate and unhampered application of the hereditary principle"; and this conclusion is supported by the mass of evidence collected in the preceding pages—historical, international, and theoretical. Abstract reason, assuredly, does not confirm the claim of hereditary legislators to a monopoly of

legislative wisdom ; the foreign evidence affords no example of a Chamber in which the purely hereditary element so overwhelmingly predominates ; while the historical evidence proves conclusively that the English House of Lords at its origin was determined by quite different principles, and that the numerical preponderance of those who owe their places exclusively to their birth is a comparatively recent phenomenon.

(8) The proper treatment of the hereditary element readily suggests itself. The present House of Lords contains a majority of Peers who are unfitted to act as legislators, and who have acquiesced in their unfitness by habitually staying away, and a minority both willing to act and well-equipped for the work of the legislature by birth, education, and family traditions. The conclusion is obvious—retain the fit and exclude the unfit. The method of selection is a comparatively minor matter. The simplest method would probably be here the fairest and most practicable : let the present members make their own selection.

(9) The treatment of the Bishops, those " immemorial members of the House," as a great Liberal historian has styled them, is a controversial topic which is better here left undiscussed, though it is a rock on which any scheme of reform might readily be wrecked.

(10) Any plan of reconstruction, to be practicable, must contain nothing that is artificial, complicated, or difficult to understand. All devices that can with appropriateness be termed "fanciful" or "doctrinaire" are certain to draw the contemptuous laughter of the British politician.

(11) It has been suggested that the House of Lords should be largely augmented by the presence of picked men sent by the great self-governing Colonies. Such a scheme is well fitted to fire the imagination, and it receives support from many solid arguments. The inherent dangers latent in this proposal, such as the possible degradation of the House of Commons to the position of a merely local institution in competition with an Imperial House of Lords, might possibly in time be overcome; but, in the present backward state of public opinion on the subject of Imperial federation, any attempt to secure an adequate proportional representation of the Colonies would be premature and doomed to failure. It might be better than nothing, however, that each great Colony should send one or more trusted delegates, capable of representing and authoritatively explaining the state of Colonial opinion on Imperial questions, although making no pretence to possessing voting power in any way adequate to the populations or importance of the great Commonwealths and

Dominions which are dependent on the decisions of the central Parliament.

(12) A number of additional suggestions must, for lack of space, be grouped together. An ideal Second Chamber, for example, ought to hold the balance even between the parties that divide the nation. Yet if one of its functions is really to act as a drag when the coach of State is driven too fast on dangerous roads, something may be said for the conservative contention that an absolute equality is not always to be desired. In any view, the reformed House of Lords must be so constituted as to act as an efficient check on the Executive Government. This is the more necessary at the present day under conditions which threaten, by a close alliance between Cabinet and Commons, to disregard completely Montesquieu's doctrine of the "separation of powers" as the only safeguard of constitutional liberties.

An ideal Chamber, further, should be so composed as to include a body of expert opinion on all topics, military, naval, diplomatic, administrative, scientific, and Imperial, that are likely to call for the interference of the Legislature; it should represent the mature convictions rather than the passing whims of the nation; while the necessary process of reconstruction should be so carried through as to create the minimum of dislocation in

the public business, in existing institutions, and in national habits and modes of thought.

These are a few of the considerations which should be borne in mind in proceeding to estimate the value of the various proposals made for increasing the efficiency of the Upper Chamber.

IX.

THE SELECT COMMITTEE'S SUGGESTED SCHEME OF RECONSTRUCTION.

This section proposes to consider whether the framework of a reformed Upper Chamber outlined by Lord Rosebery's Committee is capable of improvement, and how far the practical recommendations contained in the Report (dated December 2nd, 1908) are consistent with the postulates which its members laid down for their own guidance.

I. ANALYSIS OF THE REPORT.

1. *Underlying Axioms.*

The detailed scheme of reconstruction is preceded by a statement of the abstract principles accepted as authoritative by the members of Committee, apparently with ultimate unanimity. These maxims are mainly three, namely:—(*a*) That the mere fact of birth taken by itself ought

not to secure admision to the Upper House—a recommendation carried, it would appear, almost by acclamation; (*b*) that "qualification" by official experience should be "the main test for admission to the reformed House of Lords," a principle accepted after prolonged discussion; and (*c*) that all reforms should be frankly based on "grounds of utility," without undue deference to the views of experts on the law and history of the Constitution on the one hand, or to the analogies of foreign Senates and Second Chambers on the other.

2. *The Changes Proposed.*

The main features of the scheme which is intended to embody these postulates may be epitomised as follows:

(*a*) No one, except princes of the blood royal, shall sit and vote in the House of Lords merely by reason of his possession of a peerage. The right to exercise legislative functions on the sole ground of birth—fit counterpart of the Stuart doctrine of kingship by right divine and indefeasible—would thus come to an end forthwith. The wisdom of this decision will pass to-day, in most quarters, unchallenged; although the proposed change tends to increase materially a state of things declared "anomalous" in 1874 by

a former Select Committee (on the Scottish and Irish Peers), also presided over by Lord Rosebery, which held *inter alia* "that it was undesirable that a class of Peerages should be maintained that were only titular and with which no legislative functions were associated." What was held anomalous then would in future become the rule. A majority of the Peers would be freed from legislative duties.

(*b*) A hereditary peerage, however, combined with one or other of various carefully specified "qualifications" would entitle the holder to sit and vote. Limitations of space prevent these being here given in full. They extend to the office of Cabinet Minister, if held, it would appear, even for one day; to a Viceroy of India or Governor-General for however short a term; to the Earl Marshal, the Lord Great Chamberlain, the Under-Secretaries of the various Departments for the time being; to former Speakers of the House of Commons; to *inter alios* the permanent heads of Government Departments, the Governors of certain Colonies, and Ambassadors of four years' standing (or less in certain circumstances); to a vice-admiral or lieutenant-general; to certain peers who have served for 20 years in the Commons; and to certain others who have only served for 10. The Committee calculates that there are at present 130 peers thus "qualified."

(*c*) From the remainder of the hereditary peerage 200 are to be elected for each new Parliament by their fellow-peers. For this purpose the holders of Scottish and Irish peerages are to be merged in the general body of the peers of England, Britain, and the United Kingdom. The cumulative vote is recommended. No qualification for election is here required except birth—or, more accurately, the possession of a hereditary peerage, whether created or inherited.

(*d*) There may also be created by the Crown a moderate number of life peers entitled to sit and vote in the Upper House. Strict limitations are here laid down. This small handful of non-hereditary legislators must never exceed 40 at any one time ; not more than four can be created in any one year ; and only one in any year who is not duly "qualified" by office.

(*e*) The 26 spiritual lords at present in Parliament are to be reduced to 10. The Committee would "gladly" welcome representatives of the other great Churches of the three kingdoms ; but no provision is made for their inclusion.

(*f*) Two or three Colonial representatives may possibly be added, to be selected by some method left vague by the Committee, until the views of the Governments of the countries concerned can be obtained.

(*g*) The Princes of the Royal blood—at present three in number—would retain their seats ; and so would the Lords of Appeal in Ordinary, or "law lords" (whose creation to the number of four was authorised by the act of 1887, and who are spoken of in the Report as five in number). As those who have held "high judicial office" are reckoned as "qualified peers," the composition of the House of Lords as a court of final appeal would not be interfered with.

3. *Composition of the Reconstructed Chamber.*

The Report would substitute for the existing House of more than 600 members a reformed Chamber of "something under 400." Its membership would comprise 333 hereditary peers, 130 of them "qualified," and 200 of them selected by their fellow-peers but technically "unqualified," the three Royal Princes completing the number. More than four-fifths, then, of this "reformed" House would necessarily consist of hereditary peers. To balance this compact majority of hereditary legislators, qualified or selected, there would be at most 40 life peers, 10 spiritual peers, 4 "law lords," and perhaps half a dozen representatives of the Colonies—say 60 in all. The Committee seem in some doubt as to whether the full number of life peers would be appointed, for they speak of

"a possible annual increment" of four. In any event the non-hereditary element would amount to no more than 60, as against 333 hereditary peers.

Many points of detail have been omitted from this outline, with the view of concentrating attention upon the main issues at stake.

II. CRITICISM OF THE SCHEME.

It seems natural to inquire how far a House of Lords thus reconstructed would embody the cardinal principles from which the Committee started.

1. *Distrust of the Hereditary Principle.*

Emphasis is rightly laid on "the almost exclusively hereditary character of the House of Lords" as at present constituted. The need of change is supported by unanswerable arguments. The only question that remains is whether the conclusion reached has been consistently applied in the practical details of the suggested scheme. Has the undue predominance of the hereditary element been successfully overcome or even reduced? The answer must be an emphatic negative. The obvious remedy for the undue predominance of any one element would be to introduce some new element in quantity sufficient

to modify effectually, if not to control, the old one.

This has not been done. Some 262 of the 543 hereditary members[1] of the present Upper Chamber would be excluded. As a large majority of these men rarely or never enter the House, this change would be greater in theory than reality. The only new element to be added would consist of the small body of life peers—40 at most (and that only after 10 years have passed). Thereafter new life peers could only be created as vacancies occurred. It is difficult to see how 40 life peers could possibly leaven the solid mass of 330 hereditary noblemen. If it is argued that half a dozen, or even twelve, Colonial representatives would be added, it must also be remembered that 16 bishops are to be excluded—a measure which, whether admired or deplored on its intrinsic merits, reduces materially the non-hereditary element in the Upper Chamber.

This scheme of reform would seem to secure the hereditary legislators in a permanent majority of overpowering numbers, instead of sweeping away the principle to which the Committee professes to object. The same unavowed adherence to the

[1] For the elements of which this number is made up, see note to p. 30 *supra*. The Committee's figure (592), includes Scottish and Irish peers.

hereditary principle may perhaps be detected in some of the minor details of the report. A peer inheriting a title, for example, will be held qualified for membership of the Upper Chamber by 10 years' previous service in the Lower one, while 20 years' service is required in the case of a peer of new creation.

2. *Qualification by Office.*

The second cardinal doctrine, accepted by the Committee "after long and anxious deliberation," is "that qualification should be the main test for admission to the reformed House of Lords," the members "holding that the best guarantee for the satisfactory performance of legislative duties lay in the experience of affairs derived from the tenure of high and responsible office or from active service in public life." These sentiments, admirable in tone though not indisputable in application, have been given effect to by allowing the election to the Chamber of a clear majority of its members from among individuals necessarily possessing no technical "qualification" whatever. To balance 130 "qualified" hereditary Peers and 30 "qualified" life Peers against 200 technically "unqualified" Lords of Parliament is not a consistent application of the principle for which the Committee contends.

This part of the scheme is open to further objections. Not only is it easy to picture cases in which insistence upon a hard-and-fast list of qualifications might exclude the fit along with the unfit; but the suggested change would introduce into the framework of Parliament elements of rigidity, artificiality, and arbitrariness hitherto foreign to the genius of the British Constitution.

The arbitrariness becomes obvious when it is considered that the Committee's recommendations would tend to exclude from the House classes whom Lord Rosebery in 1884 particularly desired to include—representatives "of the professional, commercial, and labouring classes, of science, art, and literature" men of genius like the late Lord Kelvin, great physicians like Lord Lister, men of varied and useful gifts like Lord Avebury, men who are experts in the science of legislation like Lord Farrer. If qualifications are to be laid down at all, why should all of them be of one general type? Why should they not embrace peers who are presidents of royal societies, chairmen of boards of conciliation, or who have gained experience of administration by life-long apprenticeship as members of county councils and local authorities? There is perhaps no *a priori* reason why a poet laureate peer should prove either a worse or a better legislator than an earl marshal holding

office, since the feudal ages, by right of birth ; but a chairman of London County Council would seem at least equally worthy of inclusion as would a Governor of the subject races of Ceylon.

In brief, all such lists of favoured offices must necessarily be arbitrary and unfair. They are all tainted with the ineradicable vice of making permanent a stereotyped system planned to suit present day conditions which are certain afterwards to change. There is therefore no cause for wonder that this particular list presents features open to criticism, or that in it some of the comparatively fit have been passed over in favour of the comparatively unfit. It is a more grave objection that the list of qualified peers includes the permanent heads of Government Departments, involving the risk of bringing the exigencies of party politics into a sphere from which they have hitherto been jealously and wisely excluded.

3. *The Elective Principle.*

The recommendation that the Peers should select 200 of their own number to represent them is, taken by itself, an admirable one. It must be kept in view, however, that the Peers (some 130 in number) whom the Select Committee consider best suited to act as legislators, have already been awarded seats by right of " qualification," and are

not therefore available as candidates for election. It follows—on the principles of the Committee—that the large number of 200 elected "Lords of Parliament" must be drawn from the ranks of those who are, comparatively speaking, unqualified for the work to which they are called. Their title to admittance depends not on fitness, but on their hereditary rank, combined with selection by an electorate depending also entirely on hereditary rank.

On the electoral details of the scheme it is unnecessary to dwell. Lords of Parliament are to be elected for each Parliament, not for life. The peerages of Scotland and Ireland are to be merged in the general electorate body, and some care is taken to show that "to all intents and purposes" the terms of the Acts of Union would not be violated. The Committee recommend the cumulative vote; each peer distributing his 200 votes as he sees fit; while Lord Courtney of Penwith, apparently in a minority of one, presses the advantages of a somewhat complicated scheme of proportional representation.

4. *Life Peerages.*

The Committee "recommend that the Crown should be empowered to summon annually four Peers for life as Lords of Parliament. Read by

itself, this clause of the Report might be taken to mean that from among the class of Peers for life the Crown might in each year summon four individuals to serve as "Lords of Parliament" for that year only. In the light of the context, however, the intended meaning would seem to be that the Crown is to be empowered to *create* in any one year not more than four life peerages carrying with them the right to act *for life* as Lords of Parliament. As the inclusion of life Peers is practically the only expedient for introducing new blood among the Lords, it seems necessary to examine this part of the scheme somewhat narrowly.

(*a*) The report takes for granted that the Crown has at present the power to create life Peers, but that it cannot (without consent of the House) confer on them any right to sit in Parliament. This is, indeed, the doctrine upheld in the Wensleydale Peerage Case (1856). (*b*) Under Section 24 sub-section v. of the Report, any such life Peer who has served for 20 years in the House of Commons shall be entitled to a writ of summons to the Lords without election. To carry this into effect would of course, as regards such qualified Peers, abrogate the principle of the Wensleydale decision. (*c*) Under Section 27, the Crown may in addition create a few life peerages carrying with them seats in the Upper Chamber ;

but this is possible only under jealously guarded limitations already specified.

The Committee's anxious endeavours to broaden the basis of the House of Lords, "to invigorate it by some element from without," and to effect "a periodically renewed contact with the aspirations of the nation" (to quote from the original rough draft of the Report) have led to nothing more startling than this inclusion of a handful of life Peers. These 40 Peers (they may be fewer but not more) have to leaven by their presence a homogeneous mass of 330 hereditary Peers.

The members of Committee seem to have anticipated severe strictures on this part of their Report, for they introduce it almost with an apology—"With respect to peerages for life . . . it is perhaps necessary to make one or two remarks." The remarks need not be here repeated, for they are half-hearted and unconvincing. The smallness of the number of the life Peers is the more remarkable when it is remembered that Lord Newton's bill of February, 1907, allowed 100 to be created, while Lord Salisbury's bill of 1888 was willing to admit 50. It is instructive to learn that on a motion by Lord Belper to reduce the life peers from the inadequate number of 40 to an even more inadequate 25, eight members of

Committee voted each way, the original number being retained only because the "not contents" prevail when a tie occurs.

To attempt seriously to balance 40 life members against 330 hereditary peers would be obviously absurd. The Report, while nominally condemning the principle of a hereditary Chamber, is in reality demanding for it a new charter of privileges and a renewed lease of life.

5. *Encroachment on the Royal Prerogative.*

The Report takes no notice of the obvious fact that its recommendations involve a serious infringement of one of the oldest and most valued powers of the Crown. It has sometimes been maintained that "the composition of the House of Lords depends on the royal prerogative." While ignoring the Crown's inability to take back a peerage that has once been granted, the opinion cited contains an element of truth. The Government of the day can advise the King to increase the membership of the Upper House to any extent. This power not only acts as a steady counterpoise to the hereditary principle, but also forms a weapon in reserve for "swamping" the Lords (or threatening to do so), which has proved valuable on more than one occasion.

The Crown, it is now proposed, should re-

nounce these powers for ever, receiving nothing in return except the right to create four life peers a year (when the number does not already amount to 40). The compensation is inadequate. The British Constitution is delicately poised; by touching one part, it is possible to endanger the stability of the whole. Gladstone, ever mindful of the salutary effects of the mysterious powers held in reserve by the Crown, regarded with jealous eye any change that threatened to impair the royal authority. It is now almost a commonplace that under our present system of government "the prerogatives of the Crown have become the safeguards of the people's rights."

6. *Unsolved Problems.*

On another side the Report seems open to criticism. While raising several profound questions as to the relations that ought to prevail between the two Chambers of the Legislature, or between that Legislature and the nation, it leaves them all unsolved. The Committee "feel that the party in power in the elected Chamber should be able to count upon a substantial following in the House of Lords," but they have no suggestion to make for obviating the existing evil. Expedients were discussed for invigorating the House "by some element from without," by admitting

representatives of the great urban communities, and also of the county councils, or by allowing the Government of the day to nominate a number of its own supporters during their period of office ; but the Committee have failed to agree on making any such recommendations.

They have done nothing towards representing the varied aspects of the national life, wisdom, or enterprise. They have suggested nothing towards reducing the inequalities of party in the Upper Chamber, or for promoting harmony between the two branches of the Legislature. While apparently in favour of the Referendum, they make no recommendation either for or against its adoption. The doubts and difficulties which contributed towards these omissions are readily understood ; yet it cannot be denied that the members of the Select Committee have detracted greatly from the value of their own Report by shelving some of the most vital questions included in the scope of their investigation.

In conclusion, it may willingly be admitted that Lord Rosebery's task was a tenfold harder one than that of any of his arm-chair critics. He has had to mediate among the three rival schools of thought of which his Committee was composed. The minutes show that he was outvoted on cardinal points of his own suggested scheme ; and

it is evident that, to avoid total shipwreck, he has made jettison of much he held of value. The Report is of the nature of a compromise, and shows in almost every section traces of resulting inconsistencies.

X.

THE NEED OF AN ALTERNATIVE SCHEME.

The problem of adjusting the relations between the two branches of the Legislature is still unsolved. The scheme outlined in Sir Henry Campbell-Bannerman's Resolution would abolish the Imperial Parliament now existing in favour of a new untried one-chambered legislature ; and it could only be carried by some revolutionary procedure. Lord Rosebery's scheme, on the other hand, is unlikely to satisfy entirely either the friends or enemies of the Upper Chamber.

The whole question, then, is still an open one. An effective scheme of reconstruction that would strengthen the House of Lords without making it too strong, that would hold out any real prospect of obtaining the support of both Houses of Parliament and the goodwill of the Ministers who control the royal prerogative, has yet to be devised. The atmosphere of the House of Lords has proved

too rarified for the development of a reform scheme with sufficient vitality to survive in the rough world of politics. The only hope of maturing a more virile scheme would seem to be in the freer air of public discussion outside the House.

Any suggestions, however crude, fitted to stimulate popular interest may forward in some measure the desired result. This consideration may help at least to excuse the attempt here made to construct an alternative framework for a reformed Upper Chamber. Some such outline, indeed, however tentatively drawn, would seem called for, if only for the sake of logical completeness. The following suggestions are offered accordingly, as a contribution to the discussion:

1. *Preliminary Suggestions.*

The criticisms already hazarded upon the Report of Lord Rosebery's Committee, and indeed the terms of that Report itself, suggest directions in which it is capable of improvement.

(1) When excluding a considerable number of hereditary legislators, it is admittedly of the first importance that the individuals who retain their seats in the Upper Chamber should be those best fitted for the varied work to be done there. Two methods of obtaining this result are possible: (*a*) To draw up, once and for all, a stereotyped list of

"qualifications"—the method adopted in theory by the Select Committee; (*b*) to trust the peer-electorate to choose the best men of their own number, according to the changing needs of changing times. The latter is the better course: an opinion which would appear to have been shared by many members of the Committee; for the original draft of the Report declared (in words toned down in the final version in accordance with the terms of an amendment) that two of the three sections composing the Committee concurred "in thinking that the hereditary peers might be trusted to elect for themselves the best of their body to sit as Lords of Parliament."

The reasons for prefering this indirect method of securing the services of the men best qualified are mainly two. Not only would such a method prove more flexible and less arbitrary in its operation; but it is more in accordance with the traditions of political life that now prevail in Great Britain, where men are usually chosen to serve as representatives of their fellows by an election based upon an estimate of the abilities they have shown in public life. Peers who have distinguished themselves in local administration, in diplomatic or departmental work, as Governors of Colonies, or on the floor of the House of Commons (that great arena for "the testing and selecting of public men

in debate,"[1] would naturally be among those chosen. From another point of view, this method is desirable ; for to leave to the excluded hereditary peers an absolutely free hand in electing their own representatives would seem only a fair compensation for the loss of their individual seats. Less could not reasonably be offered.

Unfortunately, as it will seem to many, the members of the Select Committee have decided to adopt *both* methods concurrently. They propose to allow the peers best qualified, in their opinion, to sit by right of office (past or present), and, in addition, to allow more than three-quarters of the remaining places to be filled by "unqualified" elected peers. As a result, no room is left for the adequate representation of any other class or interest. These defects might readily be remedied by strictly limiting the seats reserved for hereditary legislators, as such, to 200 ; leaving the task of selecting the whole of these to the peers themselves. In all probability the greater number of the 130 peers marked as "qualified" by the Select Committee would find places among the successful candidates for election.

(2) Abundant room would thus be left for the introduction of new blood. Instead of the insignificant band of 40 life peers, a number equivalent

[1] See Sidney Low, *Governance of England*, p. 59.

to that of the hereditary peers might be gradually appointed, thus providing an adequate counterpoise without destroying the identity, traditions, or historic continuity of a time-honoured institution.

How far the Government of the day, in advising the Crown to make such appointments, ought to enjoy an unfettered choice may well be matter for debate. Any restriction of the field of selection would introduce, in a modified form, the elements of artificiality and fixity shown to be inherent in the Select Committee's scheme.

On the whole, it would seem preferable to leave the Crown an almost unlimited discretion. It would be manifestly necessary for the Government's credit and for its success in party warfare that it should be careful to appoint only the best men available to support its measures in the Upper House. Aspirants for honours, whose claims to promotion in return for services rendered could not be ignored, particularly those more distinguished for social ambitions than for any unusual endowment of brain-power, would readily accept a hereditary peerage without a seat in Parliament in preference to a life peerage encumbered by the performance of legislative duties which confer no perpetual " ennoblement " upon their descendants. The right to create new peers would thus become a

safety-valve, instead of, as at present, a source of danger to a rapidly expanding House of Lords.

(3) While provision must of necessity be made to enable certain members of the existing House, such as the four lords of appeal in ordinary, to retain their seats ; and while it may be advisable to introduce certain new members representing, for example, the Colonies and various religious or learned societies ; the less complex the method adopted for effecting this, the more acceptable, *ceteris paribus*, the resulting scheme will be. This view is supported by the words of Section 34 of the Report, which deprecate the introduction to the House of a certain class of members merely " for the duration of a Parliament, or of a Government," holding rightly that such " Lords of Parliament would be in a position anomalous as regards the House and unsatisfactory as regards themselves." Such reasoning would seem to be quite general in its bearing, and ought not to be confined to the special class of members to whom the Report applies it.

It would be well, then, in the cause of simplicity and to avoid awkward anomalies, that the House should contain only two constituent classes—the elected hereditary peers and the nominated life peers ; and that the composition of these two

classes should be so regulated as to include all interests which deserve to be represented.

2. *Outline of Alternative Scheme.*

Neglecting all points of detail, the essential features of the reconstruction, now proposed as a substitute for that of the Select Committee, may be broadly summed up under three heads:

(1) Apply the principle of delegation (or election if that word be preferred), exactly as Lord Rosebery's Committee recommend, so as to cut down the hereditary members of the House from 600 to one-third of that number. When we consider the smallness of the average House, and the numerous Peers who have never attended more than once or twice, 200 seats would probably be ample to protect the vested interests of all those peers who were really prepared to act regularly as legislators, and would certainly include all those who by their previous diligence in performing their functions in the House had established a claim to special consideration.

It is not desirable that the main issues here raised should be obscured by the discussion of details; but a few subsidiary points and possible alternatives may be briefly mentioned.

(*a*) There are two possible systems on which the elected peers might hold their seats—for life,

as is the case at present with representatives of the Irish peerage ; or for each separate Parliament, as with the peers representing Scotland. Something could be said for either system, but the Committee have probably decided wisely that a new election should take place at the commencement of each Parliament. It is, of course, imperative that some method of election should be adopted which would be certain to provide for an adequate representation of the minority among the peers.

(*b*) As twenty years must elapse before full effect is given to the operation of the complementary provision (to be immediately explained) for filling the places thus left vacant, a period of transition is inevitable. It would thus be possible, at the expense of slightly complicating the scheme of reform, to permit at first the election of 400 hereditary peers (if so many were willing to accept nomination for election at the hands of their brother peers)—the number elected suffering a diminution each election (proportional to the efflux of time), until the minimum of 200 was reached in twenty years. The advantages of this would be twofold : violent fluctuations in the total membership of the House would be obviated ; while opposition would be softened by making more gradual the exclusion of those existing peers who desired to retain their seats. A momentous,

but not too violent, change would thus have been gradually effected without infringing on individual vested interests and without any awkward dislocation during the period of transition.

(*c*) The historic character of the House, as containing a graded hierarchy of ranks, might be, to a great extent, preserved if the seats were allocated on some simple scheme, according to the various grades of the peerage, each rank appointing its own delegates. On the other hand, it may be urged, with perhaps greater force, that prominent members of the higher grades are sure to be elected, on the grounds of influence and personal qualifications combined, to a number greater than any such stereotyped formation of constituencies would provide.

(*d*) Much might be said for merging the entire number of existing bishops in the new electorate of the Upper House and allowing them to become candidates for election like the lay lords. The hereditary peers might thus, if they pleased, assist in electing as many bishops as seemed good to them. The presence of these representatives of the Anglican Church might be balanced by the action of successive Governments, who would be free to include members of other Churches among their annual lists of peers for life.

These are minor points. The first essential

feature of the proposed scheme consists in the election of 200 hereditary peers to represent their fellows.

(2) The counterpart of this exclusion of some 400 hereditary peers would be supplied by vesting in the Crown, by Act of Parliament, the right to appoint ten life peers annually. If these life peers were chosen, on the whole, from among men who had already gained high distinction in the public service, in professional life, or in science, art, or literature, their average age might be roughly reckoned at fifty, and their prospects of survivance (according to the actuarial tables of the life assurance societies) at twenty years. This would allow a gradual expansion in their number, proceeding by annual increments of ten, until an approximately constant body of about 200 life peers had been finally attained. It would, of course, be possible—if thought advisable—to fix an absolute maximum at 200, or even at a somewhat lower figure. The elected hereditary peers (on either of the alternatives above suggested) being then fixed at 200, the House of Lords would thenceforward consist of, approximately, 400 members equally divided between the two classes.

If it is argued that the 200 representatives of hereditary rights would still leave the Upper Chamber unduly exposed to aristocratic and Conservative

influences, two partial answers may be suggested. To reduce the hereditary element much further would be to alter entirely the character and traditions of the House ; while, on the other hand, the 200 life peers elected by the Sovereign on the recommendation of successive Cabinets would represent the opinions of the electorate as expressed during the preceding twenty or thirty years. If the Liberals, for example, had been in power throughout the entire period all the life peers would be composed of those who had originally been Liberals ; while, in the event of both parties having been in power alternately, the number of life peers adhering to each party would be roughly proportional to the periods during which they had enjoyed office and popular favour. This principle of appointment would be completely in accord with the conception that the Second Chamber stands for a revision of the fleeting popular caprice of the moment in the light of the more deliberate and permanent will of the people.

Here, again, important subsidiary points must be lightly passed over. (*a*) How far the area of choice should be left unrestricted has already been discussed. Much might be said on both sides of the question. Some basis of compromise might possibly be here devised ; it might be required, for example, that the Army, Navy, Diplomatic

Service, the clerical, medical, leg[illegible] an essen-
professions should all furnish a[illegible] wever,
of representatives. 134 Upper [illegible]om-

(*b*) In some such way the s[illegible] ·t
of the Colonies in the Imperi[illegible]
be provided for, if so desired,
directed to appoint life peers either from among certain classes of Colonial officials, past or present, or from among lists prepared for that purpose by the Colonial Legislatures.

The ultimate possibilities of the scheme need not, however, be allowed to interfere with the extreme simplicity of its essential principle, to wit, the appointment of some 200 life peers by the Crown's responsible Ministers on the basis of ten each year. The new power, if sufficiently unfettered, of thus appointing a more generous allowance of life peers would prove a not inadequate compensation for the surrender of the Crown's existing prerogative of the right to "swamp" the Upper House.

(3) The members of the House thus reconstituted, approximately 400 in number, would still in all probability remain unequally divided between the two parties; although the excessive inequality of the present *régime* would be at an end. The legislative consequences of this inequality might be further neutralised by the adoption by the

influenc Chamber of a modification in its methods To r rocedure. By a change in the Standing Orders wc the House (or better, perhaps, by Statute) all bills after their second reading might be referred to one or other of a series of Committees appointed more or less on the American model, with the two parties equally balanced under a chairman favourable to the Government.

In the United States, legislation is practically the work of Standing Committees of the two Houses of Congress, and not of Congress as a whole. The Vice-President of the States as Speaker of the Senate nominates the members of these Committees at the commencement of each Congress, and it has become a constitutional convention that the President's party should have a bare majority of one in each Committee. The Lord Chancellor might be allowed to perform for the House of Lords a similar duty on similar lines, or some alternative method of securing an approximation to equality might be devised, for example, by means of a Committee of Selection, to follow a precedent set by the House of Commons. American models need not, of course, be minutely copied, and, in particular, the numerous small Standing Committees of the Senate of three to sixteen members might profitably be replaced in Great Britain by, say, five or six Grand Committees

of seventy or eighty each. It would be an essential feature of the suggested expedient, however, that the findings of the House of Lords Committees, like those of Congress, should carry great weight with them.

The advantage of such a scheme, if found practicable, would be obvious. A line—all the better for being somewhat vague and fluctuating—would be drawn between the revising and the suspending functions of the reformed House of Lords. Where only matters of detail were involved, or questions on which the House was not prepared to take a definite stand, the work of legislation would be accomplished by a Grand Committee in which parties were fairly balanced, and the findings of this Committee would be confirmed by the House almost as a matter of course. Where, on the other hand, vital principles were at stake, the House as a whole would still hold in reserve its suspending power, and might take the risk, as at present, of forcing the Ministry to choose between laying aside their bill or challenging a General Election on a definite issue. The chances of such an absolute deadlock occurring, however, under the scheme of reform, would be, comparatively speaking, remote.

Some such scheme, if adopted, would appear to retain many of the best features of the existing system, while reducing the anomalies that expose

it at present to adverse criticism. If the reforms suggested do not seem, to extreme men, sufficiently drastic or far-reaching, that very fact may recommend them to those who are more moderate in their expectations. If the scheme is far from embodying any of those counsels of perfection that find favour with the constructors of Utopias, it has to be remembered that the reformer's best policy is not to reject the attainable because it falls short of his aspirations ; but rather, balancing the ideal with the possible, to make the utmost of the materials at his disposal under the conditions that actually prevail.

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